

In The Matter Of:
Leo Vannorman, et al v.
Flexsteel Industries, Inc., et al

Gerald Alexander
August 2, 2011

Midwest Reporting, Inc.
1448 Lincolnway East
South Bend, Indiana 46613
574-288-4242
reporters@midwestreporting.net

STATE OF INDIANA
IN THE ELKHART SUPERIOR COURT 3

LEO VANNORMAN, et al.,)	
)	
Plaintiffs,)	
)	
vs)	
)	Cause No.
FLEXSTEEL INDUSTRIES, INC., LDL)	20D03-1103-PL-10
REALTY COMPANY, LLC, HERITAGE)	
FINANCIAL GROUP, INC., DAVID L.)	
DYGERT and PHYLLIS B. DYERT,)	
)	
Defendants.)	
-----)	

The Videotaped Deposition of GERALD ALEXANDER

Date: Tuesday, August 2, 2011

Time: 9:17 a.m.

Place: Barnes & Thornburg, LLP
600 1st Source Bank Center
100 North Michigan Street
South Bend, Indiana 46601

Called as a witness by the Plaintiffs in
accordance with the Indiana Rules of Civil
Procedure pursuant to Notice.

Reported by
Angela J. Galipeau, RPR, CSR
Notary Public, State of Indiana

1 APPEARANCES:

2 MR. RODNEY L. MICHAEL, JR.

3 MR. THOMAS A. BARNARD

4 Taft Stettinius & Hollister LLP

5 One Indiana Square, Suite 3500

6 Indianapolis, Indiana 46204

7 MR. JOHN D. ULMER

8 Yoder, Ainlay, Ulmer & Buckingham, LLP

9 130 North Main Street

10 Goshen, Indiana 46527

11 For the Plaintiffs;

12 MR. ROBERT G. DEVETSKI

13 MS. KELLY J. HARTZLER

14 Barnes & Thornburg, LLP

15 600 1st Source Bank Center

16 South Bend, Indiana 46601

17 For the Defendant, Flexsteel Industries, Inc.;

18 MR. MICHAEL J. SCHMIDT

19 Kreig Devault LLP

20 4101 Edison Lakes Parkway, Suite 100

21 Mishawaka, Indiana 46545

22 For the Defendants, LDL Realty, LLC & Heritage

23 Financial Group, Inc.;

24 MR. JAMES F. GROVES

25 Lee, Groves & Zalas

205 West Jefferson Boulevard, Suite 502

South Bend, Indiana 46601

For the Defendants, David and Phyllis Dygert;

MR. BARRY COPE

Bingham McHale LLP

2700 Market Tower

10 West Market Street

Indianapolis, Indiana 46204

For Indiana Insurance Company;

1 MS. BARBARA A. JONES (via telephone)
2 Cantrell, Strenski & Mehringer, LLP
3 150 West Market Street, Suite 800
4 Indianapolis, Indiana 46204

For Continental Casualty Company;

5 Also Present

Ms. Sara Hazen, CLVS, Midwest Reporting, Inc.

6 * * *

I N D E X
THE VIDEOTAPED DEPOSITION OF GERALD ALEXANDER

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1 VIDEOGRAPHER: Good morning. We're now on the
2 record. Today's date is August 2, 2011. The time is
3 now 9:17 a.m. This is the videotaped deposition of
4 Gerald Alexander taken in the matter of Leo
5 Vannorman, et al., versus Flexsteel Industries, et
6 al.

7 Will the attorneys please introduce themselves
8 and who they represent, and will the court reporter
9 please swear the witness.

10 MR. MICHAEL: Rod Michael for the plaintiffs.

11 MR. BARNARD: Tom Barnard for the plaintiffs.

12 MR. ULMER: John Ulmer for the plaintiffs.

13 MR. GROVES: James Groves for Dygerts.

14 MR. COPE: Barry Cope for Indiana Insurance
15 Company.

16 MR. DEVETSKI: Robert Devetski on behalf of
17 Flexsteel Industries.

18 MR. COPE: On the phone?

19 MS. JONES: Barbara Jones for Continental
20 Casualty.
21
22
23
24
25

1 GERALD ALEXANDER

2 called as a witness by the Plaintiffs, having first been
3 duly sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MICHAEL:

6 Q. Would you please state your name and address for the
7 record.

8 A. Gerald Alexander. I live at 13151 State Road 120,
9 Middlebury, Indiana.

10 Q. Thank you, Mr. Alexander. I understand you had some car
11 problems this morning; and I appreciate you making it in
12 here to see us today. My name is Rod Michael. I'm an
13 attorney, and I represent the plaintiffs in this lawsuit
14 and I'm going to be taking your deposition today. Okay?

15 A. Sure.

16 Q. Are you represented by an attorney here today?

17 A. No.

18 Q. Okay. Have you ever had your deposition taken before?

19 THE WITNESS: Is that what you guys took, or is
20 that something different?

21 MR. DEVETSKI: I think you better ask him
22 questions.

23 A. Oh, okay. I made a statement to Barnes & Thornburg. I'm
24 not sure if it was considered a deposition or not.

25 Q. Did you meet with Barnes & Thornburg before today's

1 deposition? Is that the statement that you're talking
2 about?

3 A. Yeah.

4 Q. Okay. Was there a court reporter there like Angela, who
5 is with us today?

6 A. No, no.

7 Q. And I'll get to that in just a moment. Let me first back
8 up and explain to you a little bit about how depositions
9 work. We have a court reporter with us today. Her name
10 is Angela, and she's going to be making a written
11 transcript of all the questions and answers.

12 And because of that, it's important that when I ask
13 you a question that you answer it verbally with a yes or a
14 no because nods and head shakes don't come out very well
15 on the record. Okay?

16 A. Yes.

17 Q. I'm going to do my best to ask questions that make sense,
18 but it's also important that if at any time you don't
19 understand one of my questions that you ask me to stop and
20 back up and rephrase it; and I will be happy to do that.
21 Okay?

22 A. Okay.

23 Q. And that's important because if you answer my question,
24 we're all going to understood -- or we're all going to
25 assume that you understood it. Okay?

1 A. Yes.

2 Q. Also, if you want to take a break at any time, we can do
3 that. This will be pretty informal. If you want to go to
4 the restroom or get something to drink, that's fine. Just
5 let me know. We'll stop and go off the record and take a
6 break. My only request is that if we do take a break, if
7 there's a question pending, you go ahead and answer that
8 question before we go off the record.

9 A. Sure.

10 Q. Okay.

11 A. Yeah.

12 Q. Okay. Now, you had mentioned providing a statement to
13 Barnes & Thornburg when we first started today. Was that
14 yesterday?

15 A. No. It was a month or so ago, maybe more.

16 Q. Is that when you signed a piece of paper?

17 A. Yes.

18 Q. And who were you with at that time?

19 A. When I signed -- actually, when I signed the paper, I
20 signed the paper at home. But when I gave the statement,
21 Mr. Devetski was there, Kelly was there, I was there, and
22 my wife was there.

23 Q. Okay. And Kelly Hartzler?

24 A. Yes.

25 Q. And what's your wife's name?

1 A. Cindy.

2 Q. Is she also a former employee of Flexsteel and Dygert
3 Seating?

4 A. Yes.

5 Q. And that was about a month ago that the four of you met
6 face to face?

7 A. I think so, a month or so, yes.

8 Q. And that was here in Barnes & Thornburg's office in South
9 Bend?

10 A. No, it was a restaurant in Bristol.

11 Q. What restaurant?

12 A. River Inn.

13 Q. Have you had any face-to-face meetings with anyone from
14 Barnes & Thornburg since then?

15 A. Yes.

16 Q. Okay. And when did you have another face-to-face meeting
17 with someone from Barnes & Thornburg?

18 A. Yesterday.

19 Q. Okay. Who did you meet with yesterday?

20 A. Mr. Devetski and Kelly Hartzler.

21 Q. Anyone else?

22 A. Jim was there, Jim Groves.

23 Q. And you're talking about Attorney Groves --

24 A. Yes.

25 Q. -- who represents the Dygerts?

1 A. Yes.

2 Q. Anyone else?

3 A. No.

4 Q. How long did you meet yesterday?

5 A. I think it was like close to two hours.

6 Q. Was it here in Barnes & Thornburg's office in South Bend?

7 A. Yes.

8 Q. What did you talk about during the two hours?

9 A. Bob explained kind of the guidelines and rules for this.

10 Q. What did he tell you about the guidelines and rules for
11 this?

12 A. To basically make sure I answered every question, to
13 answer to the best of my ability, you know, not to refuse
14 to answer any questions, that I could take a break
15 whenever I wanted to.

16 Q. Anything else?

17 A. We just kind of briefly went over the statement that I
18 made previously.

19 Q. Okay. You're talking about the affidavit you signed?

20 A. The affidavit, yes.

21 Q. Was that the only physical document that you looked at
22 yesterday?

23 A. No. Kelly showed me some pictures of the buildings over
24 there and wanted to know if I could remember any of the
25 things that were on the pictures.

1 Q. Did you remember anything?

2 A. A few.

3 Q. What specifically did you call to her attention?

4 A. One of them was a picture of a truck dock that she asked
5 about a dark spot on it.

6 Q. Was it a truck dock at the facility located on Cooper
7 Drive?

8 A. Yes.

9 Q. And for ease of reference today -- well, let me ask you,
10 did you typically have a way of referring to the two
11 different buildings when you worked at Dygert and
12 Flexsteel?

13 A. Yes.

14 Q. And how did you refer to them?

15 A. Cooper Drive building was called the frame shop.

16 Q. And what did you call the other building?

17 A. The main plant.

18 Q. Okay. So Ms. Hartzler showed you a picture of a truck
19 dock at the frame shop that had a dark spot on it?

20 A. Yes.

21 Q. And the dark spot was by the dock?

22 A. It was in the dock, yes.

23 Q. In the dock. And were you able to identify what the dark
24 spot was?

25 A. I thought it was just a shadow.

1 Q. Did you ever remember seeing any liquids collected near
2 the truck dock at the frame shop during the time that you
3 worked at Flexsteel or Dygert?

4 A. Yes.

5 Q. And did you ever see any staining located near the truck
6 dock on the frame shop during the time that you worked at
7 Flexsteel or Dygert?

8 A. Yes.

9 Q. How often did you see staining in that area?

10 A. Actually in the truck dock, you could see spots that
11 looked like motor oil dropped, dripped off of trucks while
12 we were parked there.

13 Q. Anything else?

14 A. Right next to the truck dock, there was a barrel of
15 hydraulic fluid, hydraulic oil that had leaked.

16 Q. Did you ever notice any other staining?

17 A. No.

18 Q. And when you're talking about the barrel of hydraulic oil
19 that had leaked, are you referring to the incident that
20 happened in late 2001 that led to the removal of some
21 asphalt in that area?

22 A. Yes.

23 Q. And we'll come back to that later today.

24 You had mentioned that you saw precipitation from
25 time to time that would collect within the truck dock

1 attached to the frame shop. Do you know what the source
2 of the precipitation was?

3 A. Trucks, semi trucks that had parked there.

4 Q. And how would the trucks parked in the truck dock cause
5 precipitation to gather in that area?

6 A. Just normal engine oil leakage.

7 Q. Did you ever see any other type of precipitation in that
8 area?

9 A. No.

10 Q. Did rain or snow melt ever collect in that area?

11 A. Yes.

12 Q. Did you ever notice any sheen on top of any rain or snow
13 melt --

14 A. No.

15 Q. -- that collected in the truck dock?

16 A. No.

17 Q. Was that area prone to flooding during rains?

18 A. Not really prone to it. I mean, the water would run down
19 in there. But at the bottom of the dock, there was a
20 drainage area that was gravel.

21 Q. And would that gravel drainage area then allow the liquid
22 precipitation to drain out?

23 A. Yes.

24 Q. Do you know where the drain led to?

25 A. Just into the ground itself. It was just -- they like dug

1 a trench there and filled it with gravel so that the water
2 could run out of the dock.

3 Q. So at the bottom of the truck dock, someone had dug a
4 trench and then just filled it with gravel so it would be
5 porous so that it would allow the liquid to seep --

6 A. Yes.

7 Q. -- run into the ground; is that correct?

8 A. Yes.

9 Q. Do you know about how deep that trench was?

10 A. Probably maybe two feet or so.

11 Q. Two feet?

12 A. Two feet, yes.

13 Q. I'm sorry. I couldn't hear your answer.

14 Did it run the entire length of the truck dock, or
15 was it short?

16 A. Yes, the entire length.

17 Q. Okay. Was there anything else in the pictures that
18 Ms. Hartzler showed you yesterday that you called to her
19 attention?

20 A. Yes, she asked about one photo of the main plant that
21 showed some objects behind the plant. She asked if I
22 could remember what they were.

23 Q. Was that photo dated 1992?

24 A. I really don't remember what the date was on it.

25 Q. Did you know what the objects were that were behind the

1 main plant in that photograph?

2 A. Not actually. I told her what I thought they may have
3 been, but I'm not real sure.

4 Q. What did you tell her you thought they might have been?

5 A. They looked to me like they might have been extra work
6 tables that were stored out there, shoved out just to get
7 them out of the building.

8 Q. Did you have any other discussions about what those
9 objects might have been?

10 A. No.

11 Q. The work tables were the only thing that you thought of
12 that they could have been?

13 A. Yes.

14 Q. Did Ms. Hartzler tell you what she thought they were?

15 A. No.

16 Q. Did she offer any sort of explanation?

17 A. No.

18 Q. Okay. Were there any other photographs that you looked at
19 yesterday in preparation for today's deposition?

20 A. That I actually looked at, no. I mean, she had several
21 there, but that was the only ones I really looked at.

22 Q. Did you talk about the others?

23 A. No.

24 Q. Do you know what the other ones were?

25 A. I believe just different dates or different views of the

1 same two buildings.

2 Q. Okay. Now, in addition to -- well, let me back up.

3 Was the photograph that she showed you that showed
4 the dark spot in the truck dock different from the
5 photograph that had the objects behind the main plant?
6 Were those two different photographs?

7 A. Yes.

8 Q. And do you know what the date of the photograph --

9 A. No.

10 Q. -- that showed the dark staining was?

11 A. No.

12 Q. And let me just -- I know Mr. Devetski has told you the
13 rules, and I should have gone through this more carefully
14 today too. It's not always normal. When people talk, you
15 know a lot of times what I'm going to ask and, therefore,
16 you try and be helpful and answer my question. But it's
17 important at a deposition that you allow me the
18 opportunity to completely finish my question before you
19 answer because otherwise our court reporter is going to
20 have a tough time getting everything down. And when we
21 read the written record, it's going to be confusing.

22 Okay?

23 A. Okay.

24 Q. So in addition to the two photographs and your affidavit,
25 were there any other documents that you looked at

1 yesterday?

2 A. Yeah. I think we looked at a couple of MSDS's.

3 Q. And what MSDS sheets did you look at?

4 A. One of them was for LPS degreaser spray.

5 Q. Okay. Were there any others?

6 A. I'm trying to think. No, I didn't actually look at
7 another. We talked about one for -- actually, it wasn't
8 even about the MSDS. It was just the product itself. We
9 talked about an ink that was there.

10 Q. Was that a solvent-based ink?

11 A. Yes.

12 Q. And what did you talk about with respect to the
13 solvent-based ink that was there?

14 A. She asked where we used it and what it was for.

15 Q. And what did you tell her?

16 A. That it was used in the engineering department for like a
17 giant mimeograph machine.

18 Q. And what was the mimeograph machine used for?

19 A. To print out patterns for the cutting department.

20 Q. Have you heard of the phrase "law labels"?

21 A. Yes.

22 Q. Did you use the solvent-based ink in preparing any law
23 labels?

24 A. No.

25 Q. How much solvent-based ink was used in connection with

1 printing out patterns for cutting?

2 A. The bottle was a quart-size bottle, and I have no idea how
3 long that would last for.

4 Q. Do you know what the ingredients were in the solvent-based
5 ink that was used in the engineering department in
6 connection with printing out patterns for cutting?

7 A. No.

8 Q. Now, that came up in connection with an MSDS sheet. Was
9 there one available to you yesterday for the solvent-based
10 ink?

11 I had asked you a question and you said you looked at
12 a couple of MSDS sheets, correct?

13 A. Yeah.

14 Q. And then you started talking about the solvent-based ink.
15 Was there an MSDS sheet for that ink?

16 A. No. We did not have one for that.

17 Q. Okay. Have you ever seen one for that?

18 A. At one point in time, yes, Dygert had one for it.

19 Q. But you just don't remember what was on it?

20 A. No, I don't remember.

21 Q. Now, you just said at one point in time Dygert had one for
22 it. When you use the word Dygert, are you talking about
23 all the various entities that it operated?

24 A. Yes, yes.

25 Q. So just so that we make sure we have a clear record today

1 because -- do you understand there are different
2 defendants in this lawsuit, correct?

3 A. Yes.

4 Q. There's Flexsteel and then there's Mr. and Mrs. Dygert, as
5 well as some entities that were involved after Flexsteel
6 sold the property to PBD. Do you understand that?

7 A. Yes.

8 Q. So at some points it's going to be important that we
9 carefully identify the date range. And when you say
10 Dygert, it sort of leaves it broad and wide open.

11 So with respect to the MSDS sheet for the
12 solvent-based ink, is that something that to your
13 knowledge would have been at the site throughout the time
14 of the ink's usage?

15 A. Yes, it would have.

16 Q. Would that have been before 1997 when Flexsteel purchased
17 the assets of Dygert Seating?

18 A. Yes.

19 Q. And it would have been after 1997 when Flexsteel began
20 operating the site?

21 A. Yes.

22 Q. Would it have been after Flexsteel sold certain assets to
23 PBD Corporation in 2002?

24 A. Yes, the ink was still there.

25 Q. Okay. Were there any other MSDS sheets that were

1 discussed yesterday?

2 A. We talked about the MSDS sheets for -- it was Ark Research
3 Products.

4 Q. And what MSDS sheets for Park Research Products did you
5 talk about?

6 A. She wanted to know basically if they contained any
7 solvents because I did not have the MSDS sheets for those.

8 Q. And what did you tell her?

9 A. I told her I didn't believe so, no. They were a
10 water-based cleaner.

11 Q. What were the Park Research Products that you were
12 referring to?

13 A. Can I look at the paper here --

14 Q. Sure.

15 A. -- to give you the names of them?

16 Q. Sure. Yeah. And I notice you brought a stack of papers
17 with you.

18 A. I can't just zip the names off the top of my head. Okay.
19 And I think you were saying Park. It's Ark, A-r-k.

20 Q. A-r-k. Okay.

21 A. Yes. It's Ark general purpose cleaner and Ark heavy duty
22 degreaser.

23 Q. Okay. And let's go ahead and pause right there because
24 you pulled out some documents. So, again, because we're
25 at a deposition, we have to try and keep things organized

1 here and keep our records straight.

2 So I'm going to hand you a document real quick, or
3 ask Angela to hand you a document that she's going to mark
4 as Plaintiffs' Exhibit 20.

5 (Plaintiffs' Exhibit 20 marked for
6 identification.)

7 Q. Have you seen Plaintiffs' Exhibit 20 before?

8 A. Yes.

9 Q. And do you understand, sir, that you're here today to
10 provide testimony pursuant to the subpoena that we issued
11 upon you that we've marked as Plaintiffs' Exhibit 20?

12 A. Yes.

13 Q. Okay. And in addition to requiring your appearance today,
14 that subpoena also required you to bring documents,
15 correct?

16 A. Yes.

17 Q. Okay. And you've got those documents with you today?

18 A. Yes, I do.

19 Q. And, in fact, you were just -- you pulled out one of those
20 documents and you just read from it and you were talking
21 about the Ark research chemicals, correct?

22 A. Yes.

23 Q. Okay. And what I want to do now is try and do our best to
24 identify what you have here in front of you that you have
25 brought to the deposition. Let me ask, Bob.

1 MR. MICHAEL: Do you know, Bob, have all of these
2 documents been produced in this case, or should we
3 take a break and have them copied --

4 MR. DEVETSKI: I have no idea. Kelly might know.

5 MR. MICHAEL: -- and just mark them? Maybe what
6 we should do is at the first break get a copy and
7 then we can just mark the whole packet. And that way
8 we know what he brought today. Is that fair?

9 MR. DEVETSKI: That's fine.

10 MR. MICHAEL: Okay. That way we don't have to
11 take your originals. We'll just copy them and we
12 know what's been brought today.

13 THE WITNESS: Sure.

14 MS. JONES: Excuse me. Could I ask you to speak
15 up just a little bit? Sometimes I can hear you very
16 clearly and other times not.

17 MR. MICHAEL: Are you talking to the witness or
18 to me?

19 MS. JONES: To both of you. Thank you.

20 THE WITNESS: Move the phone over this way.

21 MR. ULMER: Can you hear us now?

22 MR. BARNARD: Barb, are we coming in clear now?

23 MS. JONES: Yes, thank you.

24 BY MR. MICHAEL:

25 Q. Okay. Mr. Alexander, I'm going to ask the court reporter

1 to hand you another document. She's going to mark this
2 one as Exhibit 21, and I'd like you to please take a look
3 at it.

4 (Plaintiffs' Exhibit 21 marked for
5 identification.)

6 Q. Do you have Exhibit 21 in front of you?

7 A. Yes, sir.

8 Q. And is that a copy of the list that you were just looking
9 at in your own files that you were testifying about?

10 A. Yes, it is.

11 Q. Is that your handwriting in Plaintiffs' Exhibit 21?

12 A. Yes.

13 Q. And is that a true and accurate copy of your written list
14 that you have, front of you, in front of you?

15 A. Yes, it is.

16 Q. When was that list created by you?

17 A. It would have been sometime right in the area that
18 Flexsteel bought Dygert Seating.

19 Q. So sometime right in the area of March of 1997?

20 A. Within a year or two, yes. At the time that I wrote this,
21 we were still running our frame shop. And Flexsteel
22 closed it down shortly after they bought it, bought us.

23 Q. And what makes you believe that the list was generated
24 somewhere in the area when Flexsteel purchased the assets
25 of Dygert?

1 A. Because of the materials that we used in our frame shop.
2 They're still on my list.

3 Q. For instance, the acetylene?

4 A. The acetylene, the argon, yes.

5 Q. Now, there's an X next to the acetylene. Does that
6 indicate something to you?

7 A. It probably did at the time. But I have no idea why I put
8 it there now, no.

9 Q. Could it have meant that you were no longer using that
10 product?

11 A. No. Because I've also got one by carbon monoxide, which
12 is produced by our forklifts.

13 Q. Okay. Now, you were pointing somewhere when you --

14 A. Yeah. It's about the middle of the page there.

15 Q. Doesn't that say carbon dioxide?

16 A. Yep, that one does. But if you look at the second page
17 then, I also have X's by the glue that we were still
18 using, the solvent-based ink. So I really don't know what
19 the X's meant at the time now.

20 Q. Why were you speaking yesterday about the Ark products?

21 A. Kelly asked if I knew or remembered if they were a
22 solvent-based degreaser.

23 Q. And what do you remember about the Ark products?

24 A. Basically that it was something that you mixed with water.

25 Q. How many of the -- well, for instance, on the first page,

1 it's an Ark product, HD degreaser.

2 A. Yes.

3 Q. That's one of the ones that you were talking about?

4 A. Yes.

5 Q. How much of that did you use at Dygert Seating and
6 Flexsteel?

7 A. I bought a five-gallon bucket of it one time.

8 Q. Do you remember the date of that purchase?

9 A. No.

10 Q. Do you know where Ark Products is located?

11 A. No, I don't.

12 Q. It's fair to say that if we could obtain an invoice for
13 the HD degreaser that you bought from Ark Products with a
14 date on it, that this would have had to have been
15 generated after that date, correct?

16 A. I would assume so, yes.

17 Q. Other than the HD degreaser, did you guys talk about
18 anything else on this particular list yesterday?

19 A. I don't believe so. Well, no. Yeah, we did, spray paint.

20 Q. And what did you talk about with respect to spray paint?

21 A. Where it was used, what it was used for.

22 Q. And what did you say concerning where it was used and what
23 it was used for?

24 A. That we used it mainly to touch up metal carts that we had
25 that we moved fabric around on.

1 Q. Were finished parts ever painted?

2 A. Finished parts, they were usually painted -- well, we've
3 got to kind of clarify that a little bit. Product that
4 came in from Flexsteel, the frames would have been already
5 painted. Prior to Flexsteel, we did paint a limited
6 number of frames for specific customers, but very few of
7 them.

8 Q. Okay. And let's talk about the time when the frame shop
9 was in operation. Okay. Because it did operate a little
10 bit after Flexsteel, correct?

11 A. Yes.

12 Q. During that time, did you paint any finished products?

13 MR. DEVETSKI: Excuse me, Rod. Which time are
14 you talking about now, before Flexsteel or after
15 Flexsteel?

16 BY MR. MICHAEL:

17 Q. Well, let's talk about before March of 1997 when the frame
18 shop was operational; did you paint any finished products?

19 A. Yes.

20 Q. Between March of 1997 and the time that the frame shop was
21 closed, after Flexsteel purchased Dygert, did you paint
22 any finished products?

23 A. That I can't be sure of because I wasn't actually over in
24 the frame shop all the time. You know, I don't know what
25 frames came in from Flexsteel, which ones didn't. So I

1 really couldn't give you an honest answer there.

2 Q. Did your job duties with respect to the frame shop change
3 after Flexsteel purchased the assets of Dygert Seating?

4 A. Not until they actually closed the frame shop.

5 Q. So let's talk about before they closed the frame shop.
6 Between March of -- do you know when the frame shop
7 closed?

8 A. No.

9 Q. Okay. Well, between March of '97 and before they closed
10 the frame shop, were you still over there from time to
11 time?

12 A. Yes.

13 Q. During that time, are you aware of any finished products
14 being painted?

15 A. No.

16 Q. Do you know one way or the other?

17 A. Not honestly, no.

18 Q. Was there anything else on this list that we've marked as
19 Plaintiffs' Exhibit 21 that you talked about yesterday
20 with Mr. Devetski and Ms. Hartzler in preparation for
21 today's deposition?

22 A. I think that was it.

23 Q. You didn't talk about the entry for trichloroethylene?

24 A. The what?

25 Q. The entry for trichloroethylene?

1 A. Yesterday, no.

2 Q. It didn't come up at all?

3 A. No.

4 Q. What other documents did you look at yesterday with
5 Mr. Devetski and Ms. Hartzler?

6 A. I think that's pretty much it.

7 Q. Two photographs?

8 A. Yes.

9 Q. An affidavit and your handwritten list that we've marked
10 as Exhibit 21, those are the documents you looked at
11 yesterday?

12 A. And the MSDS for the LPS.

13 Q. There wasn't anything else?

14 A. No.

15 Q. Do you have a copy of the MSDS for the LPS degreaser spray
16 in the documents you've brought today?

17 A. I believe there's one in here, yes. Yes.

18 Q. And do you mind if I take a look at it, just so I know
19 what we're talking about?

20 Where did you obtain the MSDS for the LPS degreaser
21 spray that you talked about yesterday?

22 A. Ms. Hartzler got that copied.

23 Q. And is that a product that Flexsteel had used in its
24 business?

25 A. We determined that this particular one was not. It did

1 not match a purchase order that she had located.

2 Q. When you say "we determined," do you mean you and
3 Mr. Devetski and Ms. Hartzler?

4 A. Yes.

5 Q. So that was a joint effort?

6 A. Yes.

7 Q. And with respect to your personal knowledge, do you
8 believe, in fact, that the LPS degreaser spray did not --
9 was not used by Flexsteel, the one that's identified in
10 that MSDS sheet?

11 A. That is correct.

12 Q. And is that based only upon the purchase record that
13 Ms. Hartzler had located, or is there any other reason?

14 A. Pretty much the purchase record because the appearance of
15 the cans has changed. So, you know, I can't look at a
16 picture of the can and say, yeah, that's definitely the
17 one or it's not.

18 Q. What did the can look like for the one that you remember?

19 A. It was the same coloring; but the wording was different on
20 it, the appearance of it.

21 Q. How did you get the photographs of the cans?

22 A. Pardon, the photograph?

23 Q. How were you looking at pictures of cans yesterday?

24 A. I don't really remember. I don't remember if it -- it was
25 something that Kelly showed me, I think. I don't really

1 remember.

2 Q. Are you sure you looked at pictures of cans yesterday?

3 A. I'm pretty sure I did, yeah.

4 Q. Were there actual cans in the room?

5 A. Maybe it was a brochure or something. I don't really
6 remember now.

7 Q. And is it that brochure that you're basing your testimony
8 on that you think the two products were different?

9 A. That and the purchase order.

10 Q. And what did the purchase order look like that you looked
11 at?

12 A. That I didn't see.

13 Q. She just told you it was different, the purchase order?

14 A. Yes.

15 Q. And you took her word for it?

16 A. Yes.

17 Q. And as far as the brochures, you can't remember what they
18 looked like; is that correct?

19 A. No.

20 Q. Were they in color?

21 A. Yes.

22 Q. And what color was the can that you believe had been used
23 by Flexsteel in its operations?

24 A. It was a green and white can.

25 Q. What color was the can in the brochure?

1 A. It's still green and white, but just a different
2 appearance.

3 Q. What was different about the appearance?

4 A. The way it was labeled, the overall look of it.

5 Q. What was different about the way it was labeled?

6 A. Basically the wording, you know, that --

7 Q. What was different about the wording on it?

8 A. Just the general appearance. It didn't look familiar.

9 Q. What did the wording say?

10 A. I don't recall right offhand.

11 Q. What was it about the wording that you thought didn't look
12 like it was supposed to?

13 A. Just all of it really. The can did not look like I
14 remember the cans looking.

15 Q. Okay. And it was green and white, correct?

16 A. Uh-huh.

17 Q. Just like the ones you remember; is that correct?

18 A. Yes.

19 Q. And it had some wording that didn't look right --

20 A. Yes.

21 Q. -- is that your testimony? Okay.

22 And what I'm trying to figure out is what was the
23 wording that you saw yesterday that you think didn't look
24 right?

25 A. I really can't pinpoint it. It just did not look like

1 what I recalled.

2 Q. Okay. Can you tell me what the wording looked like that
3 you saw yesterday?

4 A. Not at this moment, no.

5 Q. Can you tell me anything that was in the wording?

6 A. Just the LPS.

7 Q. Anything else?

8 A. No.

9 Q. What color were the letters of the LPS?

10 A. White.

11 Q. Was there anything else about the can that you saw
12 yesterday that's different from what you remember with
13 respect to the can that was used by Flexsteel?

14 A. No.

15 Q. Just the wording?

16 A. Yes.

17 Q. And the only specific thing about the wording that you can
18 remember today is the letters LPS were white?

19 A. Yes.

20 Q. What color were the letters LPS on the can that was used
21 by Flexsteel?

22 A. Probably also white.

23 Q. Were the letters on the can that you saw yesterday the
24 same size as the ones on the can that were used by
25 Flexsteel?

1 A. That I really couldn't say either.

2 Q. How long has it been since you saw a can of LPS degreaser
3 that was used in Flexsteel's operations?

4 A. A long time, probably -- not since Flexsteel was there
5 probably. We quit using it.

6 Q. Okay. When you say "we quit using it," who are you
7 referring to?

8 A. Well, all -- Dygert, Flexsteel, we quit using it at the
9 time of Flexsteel; and we never went back to it.

10 Q. So it's been some time prior to 2002 since you last saw a
11 can of LPS degreaser?

12 A. Oh, yeah.

13 Q. That's correct?

14 A. Yeah.

15 Q. So ten years possibly?

16 A. Yes.

17 Q. So it's fair to say that your memory of that can of LPS
18 degreaser from approximately ten years ago might not be
19 that clear; is that correct?

20 A. That's correct.

21 Q. And it would be fair to say that you could be wrong when
22 you say that the can that you saw yesterday is not the
23 same can that you used to use at Flexsteel, correct?

24 A. It's possible. It could be.

25 Q. And other than your memory of what the can looked like,

1 the only other reason that you decided that that
2 particular LPS degreaser was not used by Flexsteel was
3 because Ms. Hartzler told you she had a purchase order
4 record that showed that that wasn't the right one,
5 correct?

6 A. Yes.

7 Q. And you didn't look at that purchase order to verify that
8 for yourself, correct?

9 A. No, I did not.

10 Q. Okay. Now, we've talked about the MSDS sheet for the LPS
11 degreaser, your affidavit, the two photographs and your
12 handwritten notes that we've marked as Exhibit 21 that you
13 looked at yesterday with Mr. Devetski and Ms. Hartzler,
14 correct?

15 A. Yes.

16 Q. And you also looked at something that conveyed to you an
17 image of an LPS degreaser can, correct?

18 A. Yes.

19 Q. But you don't know if it was a document or a picture or a
20 can itself or what it was?

21 A. No.

22 Q. Was there any other thing that you looked at yesterday
23 with Ms. Hartzler and Mr. Devetski --

24 A. No.

25 Q. -- in preparation for today's deposition?

1 A. No.

2 Q. Okay. Mr. Alexander, I'm going to hand you a document
3 that we're going to mark as Exhibit 22.

4 (Plaintiffs' Exhibit 22 marked for
5 identification.)

6 Q. Do you recognize Exhibit 22?

7 A. Yes.

8 Q. Can you tell me what it is?

9 A. It's the affidavit that I signed for Barnes & Thornburg.

10 Q. And on the third page, is that your signature?

11 A. Yes, sir.

12 Q. And it's dated June 6 of 2011; is that correct?

13 A. Yes.

14 Q. What did you talk about yesterday with Mr. Devetski and
15 Ms. Hartzler with respect to your affidavit that we've
16 marked as Exhibit 22?

17 A. Nothing really specific, just that I still had it and
18 bring it with me.

19 Q. Did you talk about any of the specific paragraphs within
20 your affidavit?

21 A. Yeah, I think so.

22 Q. Okay. Which ones?

23 A. We talked about the 55-gallon drum -- did we? Maybe not.
24 I don't remember if we did talk about that one or not. We
25 did talk about the glue that was spilled outside the

1 building. I do know that, yeah.

2 Q. About the glue that you spilled outside the building?

3 A. It was spilled. I have no idea who spilled it or how it
4 got there, but I did find it.

5 Q. When was glue spilled outside the building?

6 A. I found it shortly after I started working there, which
7 would have been like '92, '93, '94, sometime in that area.

8 Q. Where did you find it?

9 A. It would have been outside the south side of the building.

10 Q. Outside of the main building?

11 A. Yes. The main plant, yes.

12 Q. Back in the grassy area?

13 A. Yes.

14 Q. Is there a ditch back there?

15 A. Yeah, there was a ditch there. It's probably 50 feet away
16 from the building.

17 Q. The ditch was about 50 feet away from the building?

18 A. Yes.

19 Q. How close to the building was the glue?

20 A. Right next to it.

21 Q. How much glue was spilled on the grass on the south side
22 of the main plant?

23 A. Appeared to be roughly a quart or less.

24 Q. What kind of glue was it?

25 A. It would have been either the contact adhesive or what

1 they used as a 777.

2 Q. And how do you know it was one of those?

3 A. That was the two types of glue that we used, depending on
4 what was available from the supplier. And that was the
5 only kind of glue that we used in the spray -- the cup
6 spray guns.

7 Q. Did the spill come from a spray gun then?

8 A. Yes.

9 Q. And how do you know?

10 A. Just basically from the size of the quantity of what was
11 there.

12 Q. What about the size and the quantity led you to believe it
13 came from a spray gun?

14 A. The amount of glue appeared to be what would be held in
15 one of the one-quart spray guns.

16 Q. Did you say one-quart spray gun?

17 A. Yes.

18 Q. Do you know who allowed the glue to be spilled outside the
19 building at that time?

20 A. No, I don't.

21 Q. What did you do with it?

22 A. Picked it up and threw it in the trash.

23 Q. Did you do any soil sampling?

24 A. No.

25 Q. Did you do any type of testing to determine whether or not

1 there was any contamination as a result of the glue?

2 A. No.

3 Q. Was there anything else that you talked about with respect
4 to your affidavit yesterday?

5 A. I don't think so, no.

6 Q. Was there anything in your affidavit you wanted to clarify
7 or correct?

8 A. No.

9 Q. Okay. Why don't we go ahead and take our first break
10 because I think I'm going to need to go ahead and get
11 copies of your documents so we can ask more specific
12 questions about it.

13 A. Sure.

14 VIDEOGRAPHER: Off the record at 10:06.

15 (Recess taken.)

16 VIDEOGRAPHER: Back on the record at 10:32.

17 Please continue.

18 BY MR. MICHAEL:

19 Q. Okay, Mr. Alexander, I've been informed that it's going to
20 be a while until we get your documents copied, so we're
21 going to go ahead and resume the deposition and go on to a
22 new topic. And once we have those copies, we'll come back
23 and I'll ask you about your documents. Okay?

24 A. Yes.

25 Q. During our break, did you talk to anybody about the

1 testimony you've given so far today?

2 A. Yeah.

3 Q. All right. Who did you talk to?

4 A. Bob.

5 Q. And what did you say?

6 A. He just reminded me to answer questions accurately and to
7 the best of my knowledge.

8 Q. Did you talk about anything substantive with respect to
9 the testimony you've given today?

10 A. Excuse me?

11 Q. Was there anything specific with respect to the answers
12 you've given today that you discussed with Mr. Devetski
13 during our break?

14 A. Not really.

15 Q. Just a general --

16 A. General, yeah.

17 Q. Were there any general topics that you discussed during
18 the break?

19 A. No.

20 Q. How did you first find out about this lawsuit?

21 A. I think the first time I heard about it was from another
22 coworker at the place where I was working.

23 Q. And who was that?

24 A. It was a man named Jeff Mobley.

25 Q. And Mr. Mobley used to be employed at Flexsteel as well,

1 correct?

2 A. Yes.

3 Q. And you said at a place where you were working. Were you
4 referring to Flexsteel or someplace else?

5 A. No, no. It was someplace else.

6 Q. And what place was that?

7 A. Scope Technologies.

8 Q. And Mr. Mobley was also employed there?

9 A. Yes.

10 Q. And he's the one who first told you about the lawsuit; is
11 that correct?

12 A. Yes.

13 Q. And what did he say?

14 A. That he had been contacted by an attorney involving the
15 case.

16 Q. Did he say who the attorney was that had contacted him?

17 A. It was you.

18 Q. It was me?

19 A. Yes.

20 Q. And how do you know that?

21 A. Or your firm anyway, I believe.

22 Q. And how do you know that?

23 A. He used your name.

24 Q. He said Rod Michael?

25 A. Yes.

1 Q. And what else did he say?

2 A. That you had called him and wanted to talk to him and you
3 were trying to find other employees or previous employees.

4 Q. After you found out about the lawsuit from Mr. Mobley, did
5 you talk to anyone else about it?

6 A. Not until Mr. Devetski's gotten a hold of me, no.

7 Q. So you didn't call Mr. Dygert?

8 A. No.

9 Q. Or anyone else that you used to work with?

10 A. No.

11 Q. And when did Mr. Devetski get a hold of you?

12 A. I don't really remember when it was.

13 Q. About the time you did your affidavit?

14 A. It would have been somewhere a little bit before that.

15 Q. And was it just a phone call?

16 A. Yes.

17 Q. Explaining about the litigation?

18 A. Yeah.

19 Q. How many communications did you have with Barnes &
20 Thornburg before you met with them and did your affidavit?

21 A. I think two.

22 Q. One was the phone call from Mr. Devetski; is that correct?

23 A. One was a phone call. And the second time, Mr. Devetski
24 and another young lady came out to the house.

25 Q. Ms. Hartzler or somebody else?

1 A. No. It was a different lady.

2 Q. Came out to your house?

3 A. Yes.

4 Q. Did they bring any documents with them on that trip?

5 A. I don't remember any.

6 Q. Do you remember what you talked about at that particular
7 occasion -- on that particular occasion?

8 A. We briefly discussed the suit and who he was representing.

9 Q. Anything else?

10 A. I can't remember if we set up the appointment at that time
11 or if it was another phone call where we set up the
12 appointment to meet at the restaurant. But that was
13 pretty much it, yes.

14 Q. When you were providing the information for your
15 affidavit, did your wife help, give you any information at
16 all?

17 A. Not for the affidavit, no, no.

18 Q. Did the two of you ever talk about the litigation and the
19 fact that you were doing an affidavit?

20 A. Yes.

21 Q. Okay. What was her position with Flexsteel?

22 A. What did she do there, her job?

23 Q. Correct.

24 A. She worked -- geez, all over. She worked in cutting and
25 sorting, she worked in engineering for a while. She did

1 just about everything that was there.

2 Q. And just so we have a clear record, can you state her
3 name, please?

4 A. Cindy Barry Alexander.

5 Q. And did you discuss with -- is it okay if I call her
6 Cindy?

7 A. Sure.

8 Q. Did you discuss with Cindy chemical usage by either Dygert
9 Seating or Flexsteel or anybody thereafter?

10 A. No.

11 Q. Has the topic of TCE ever come up in any of the
12 discussions that you've had with Cindy?

13 A. No.

14 Q. And when I say "TCE," do you understand I'm referring to
15 trichloroethylene?

16 A. Yes.

17 Q. So with respect to former employees that you had worked
18 with with Flexsteel and Dygert and PBD thereafter, you
19 talked to Mr. Mobley, you talked to your wife. Were there
20 any other former employees that you talked to about this
21 lawsuit?

22 A. No.

23 Q. You haven't talked to Mr. Dygert at all?

24 A. No.

25 Q. What about Mr. Fransen?

1 A. Who?

2 Q. Jim Fransen.

3 A. No. I haven't spoken or seen him since he went back to
4 Iowa.

5 Q. Have you had any communications with anyone from the
6 Indiana Department of Environmental Management concerning
7 your former employment at Flexsteel or Dygert or PBD or
8 any of those companies?

9 A. I think so, but I couldn't swear to it.

10 Q. And what makes you think so?

11 A. Two gentlemen showed up at Scope Seating claiming to be
12 federal agents from the Environmental Protection Agency.

13 Q. And when was that?

14 A. It would have been somewhere right around like the first
15 two weeks of April, I think.

16 Q. Do you recognize the name Glen Stutsman?

17 A. Yes.

18 Q. Does he work at Scope Seating?

19 A. No.

20 Q. How do you know Mr. Stutsman?

21 A. I believe he was the previous owner of Goshen Cushion.

22 Q. Okay. When the two gentlemen showed up at Scope Seating,
23 did they come in and talk to you?

24 A. Yes.

25 Q. Did they also talk to Mr. Mobley, to your knowledge?

1 A. No.

2 Q. Are you the only person there they came and talked to?

3 A. Yes.

4 Q. And what did they talk to you about?

5 A. Anything that I could remember about hazardous chemicals
6 and TCE.

7 Q. And what did you tell them?

8 A. They asked about spills. I told them there was never any
9 major kind of spill outdoors or anything like that. They
10 asked about the barrel of hydraulic oil that was over at
11 the Cooper Street building. They wanted to know if
12 anything had ever been dumped down sink drains, toilets,
13 anything like that.

14 Q. What did you tell him about anything being dumped down
15 sink drains or toilets?

16 A. To my knowledge, nothing ever was.

17 Q. Did they give you their names?

18 A. No.

19 Q. But you believe them to be representatives of the
20 Environmental Protection Agency?

21 A. It was kind of a strange deal. When they walked in, they
22 flipped these little identification things and closed them
23 before you could hardly blink your eye. They had talked
24 to the receptionist before they saw me. She's the one
25 that called me up. And she said that they showed her the

1 same identification. But I don't remember what their
2 names were.

3 Q. Did you give them any documentation?

4 A. No.

5 Q. I'm going to hand you a document I'm going to mark as
6 Exhibit 23 and ask you to take a look at it, please.

7 (Plaintiffs' Exhibit 23 marked for
8 identification.)

9 Q. Do you have Plaintiffs' Exhibit 23 in front of you?

10 A. Yes.

11 Q. And I'd like to direct your attention to the third page of
12 Plaintiffs' Exhibit 23. It has a Bates number in the
13 bottom right-hand number. Do you know what a Bates number
14 is?

15 A. No, I do not.

16 Q. If you look on the third page, there's a number. We call
17 it a Bates number. It's a control number that we use so
18 we know where documents came from. And this one says
19 Flex01 and an underscore and some zeros and 012261. Do
20 you see that?

21 A. Yes.

22 Q. And that indicates that Flexsteel has produced this
23 document to us.

24 At the bottom half of that page, there's an e-mail
25 and it says, "Forwarded by Joseph Kaweck/R5/USEPA/US on

1 8-18-2008, 8:29 a.m." Do you see that?

2 A. Yes.

3 Q. Does that name, Joseph Kaweck, ring a bell?

4 A. No.

5 Q. To your knowledge, you've never met or spoken with him; is
6 that correct?

7 A. Yes.

8 Q. And then there's -- it's Dave Dygert's name and an e-mail
9 address. And it says, "DDygert@SummitSeating.com." Do
10 you see that?

11 A. Yes.

12 Q. Does he work with you there as well?

13 A. At Scope?

14 Q. I'm sorry. Scope Technologies. Okay.

15 Mr. Dygert works at Summit Seating, to your
16 knowledge; is that correct?

17 A. Yes.

18 Q. Do you know one way or the other?

19 A. The last I knew, he was at Summit Seating. I don't know
20 if he's still there.

21 Q. Okay. And then at the bottom it says, "Subject: Dygert
22 Seating building on Marina Drive." Do you see that?

23 A. Yes.

24 Q. And then on the next page it says, "The following people
25 were employees of Dygert Seating working in the Marina

1 Drive building. Greg Lucchese, VP of production, cell
2 number," and there's a number there; and then it says,
3 "Gerald Alexander, maintenance man, can be reached at,"
4 and there's a phone number there. Do you see that?

5 A. Yes.

6 Q. Is that your home phone number?

7 A. No.

8 Q. Is that your phone number at Scope Technologies?

9 A. Yes.

10 Q. Have you received any phone calls from IDEM or EPA at that
11 number?

12 A. No.

13 Q. Just the two agents who showed up to interview you?

14 A. Yes.

15 Q. And then I just -- if you turn back to the page we were
16 just looking at in front of that FLEX01_ 12261, at the top
17 there's a name, Carol Ropski. Do you see that?

18 A. Yes.

19 Q. Does that ring a bell?

20 A. No.

21 Q. What about Deena Sheppard?

22 A. No.

23 Q. Mark Jaworski?

24 A. No.

25 Q. Laura Ripley?

1 A. No.

2 Q. We already talked about Joseph Kaweck. What about James
3 Morris?

4 A. No.

5 Q. Ken Theisen?

6 A. No.

7 Q. To your knowledge, is the only discussion you've had with
8 any environmental regulators, be it IDEM or EPA, and the
9 discussion you had with the two agents that day at your
10 employment?

11 A. That's correct.

12 Q. How long have you known Dave Dygert?

13 A. Probably close to 20 years.

14 Q. Would you consider him to be a good friend?

15 A. Yes.

16 Q. Have you and Cindy ever socialized with Mr. and
17 Mrs. Dygert?

18 A. No. Well, company picnics, things like that. That's all.

19 Q. Company events?

20 A. Yeah.

21 Q. Mr. Alexander, I'm going to hand you a document we're
22 going to mark as Plaintiffs' Exhibit 24.

23 (Plaintiffs' Exhibit 24 marked for
24 identification.)

25 Q. Do you recognize Exhibit 24?

1 A. Yes.

2 Q. Is that your signature?

3 A. Yes, it is.

4 Q. Can you tell me what that document is?

5 A. This was when Flexsteel -- I believe it was when they
6 bought us, they fired us and rehired us for some reason.

7 Q. When Flexsteel purchased the assets of Dygert Seating, is
8 that what you mean by "when they bought us"?

9 A. Yes. I believe so, yes.

10 Q. That was in about March of '97, correct?

11 A. Okay. Wait a minute. Okay. This would have been when
12 they sold it back to Dave.

13 Q. Okay. So this letter, Plaintiffs' Exhibit 24, would have
14 been when Flexsteel sold certain assets back to Dave
15 Dygert's corporation; is that correct?

16 A. Yes.

17 Q. And that was called PBD Corporation at that time; is that
18 correct?

19 A. Yes.

20 Q. And what was your understanding of how that transaction
21 came to be?

22 A. That it was a severance pay.

23 Q. Were you ever offered employment at any other Flexsteel
24 facility?

25 A. No.

1 Q. They didn't ask you to go to New Paris or --

2 A. No.

3 Q. So was it -- so with respect to the severance agreement
4 here that's identified in the letter we've marked as
5 Plaintiffs' Exhibit 24, was that a take-it-or-leave-it
6 offer from Flexsteel?

7 A. Basically, yeah.

8 Q. Okay. And then you took -- so you accepted Flexsteel's
9 offer; you stayed working for Mr. Dygert at PBD Corp.,
10 correct?

11 A. Yes.

12 Q. And you worked there until 2007; is that correct?

13 A. Yes.

14 Q. And then where did you go to work after 2007?

15 A. Scope Technologies.

16 Q. I think you said that was where you used to work. Are you
17 employed someplace else now?

18 A. No.

19 Q. Are you retired?

20 A. Unemployed.

21 Q. Are you laid off as a result of the economy?

22 A. No. Another company bought Scope, and they did not keep
23 my employment.

24 Q. Was there a specific reason why they didn't keep your
25 employment, or was it just a function of downsizing?

1 A. They already had their own maintenance person.

2 Q. Who purchased Scope, if you know?

3 A. A company called Lexington.

4 Q. And when was that?

5 A. The end of April, this year.

6 Q. Are you currently looking for another job?

7 A. Yes.

8 Q. Do you have any plans to leave the state?

9 A. To leave the state?

10 Q. Yes.

11 A. No.

12 Q. Are you intending to stay within the general Elkhart
13 County, St. Joseph County area?

14 A. Yes.

15 Q. When you were at Scope Technologies, what were your job
16 duties?

17 A. Maintenance.

18 Q. Same thing as you were doing previously for Dygert,
19 Flexsteel?

20 A. Yes.

21 Q. What type of business is Scope Technologies in?

22 A. A seating company.

23 Q. Were they a competitor of Dygert and Flexsteel?

24 A. Yes.

25 Q. And where are they located?

1 A. Here in Elkhart -- I'm not in Elkhart anymore. In
2 Elkhart.

3 Q. I think I asked you this, but just to make sure. To your
4 knowledge, the only former Flexsteel/Dygert employees who
5 went to work for Scope were you and Mr. Mobley?

6 A. No, there were others there.

7 Q. Who else went to work at Scope?

8 A. It would have been Deb Hess, Cheryl Lashure, my wife
9 Cindy, Loretta Shrock, Terry Hayes. There was a lady
10 named Betty. I can't think of what her last name is. And
11 one of the office girls, Shannon Metcalf.

12 Q. Did all of these individuals go to work for Scope
13 Technologies after 2007, about the time you did?

14 A. Yes.

15 Q. Why did the facility that had been operating at the Marina
16 Drive location, the main plant as you refer to it as, shut
17 down in 2007?

18 A. Because Scope bought the business, and they moved
19 everything over to their location.

20 Q. So Scope bought the business sometime in 2007, correct?

21 A. Yes.

22 Q. When you say "moved everything over to their location,"
23 you mean all the equipment?

24 A. Yes.

25 Q. The inventory?

1 A. Yes.

2 Q. The raw materials?

3 A. Yes.

4 Q. And several of the employees?

5 A. Yes.

6 Q. Do you know who Scope bought the business from?

7 A. No.

8 Q. Do you know who owned the business at the time that it was
9 closed in 2007?

10 A. Actually, no. I know who I thought owned the business,
11 but --

12 Q. But you don't know for sure?

13 A. No, I don't know for sure.

14 Q. Okay. Who did you think owned the business?

15 A. Dave Dygert.

16 Q. Do you know who paid your paychecks?

17 A. Dave Dygert.

18 Q. Do you remember seeing whose name was on your payroll
19 stub? Would it have been Dave Dygert, or was there a
20 business name?

21 A. Actually, at that time, I don't really remember.

22 Q. Do you recognize the name LDL Corporation?

23 A. No.

24 Q. Do you recognize the name Heritage Financial Services?

25 A. Yes.

1 Q. What's your understanding of who Heritage Financial
2 Services is?

3 A. They were owner of the seating company at one point in
4 time.

5 Q. Do you know about when that was?

6 A. Not really. I don't really remember. It wasn't very
7 long.

8 Q. Was there an individual named Brian Smith who used to work
9 there?

10 A. Yes.

11 Q. Is he the one that told you that Heritage Financial
12 Services was the owner of the company at that particular
13 time?

14 A. Yes.

15 Q. And you say it wasn't very long. Do you know about how
16 long Heritage owned the business?

17 A. Maybe a couple years.

18 Q. Was it near the 2007 timeframe or was it earlier on or do
19 you know?

20 A. Actually, it was near that time, yes.

21 Q. Do you think Heritage was the owner at the time that Scope
22 bought the business?

23 A. Yes. I'd pretty much forgotten about Heritage even.

24 Q. All right. So now that you've refreshed your
25 recollection, you believe that Heritage Financial Services

1 is the entity that sold the business --

2 A. Yes.

3 Q. -- to Scope?

4 A. Yes.

5 Q. All right. Mr. Alexander, I'm going to hand you a
6 document we're going to mark as Plaintiffs' 25 and ask you
7 to please take a look at it.

8 (Plaintiffs' Exhibit 25 marked for
9 identification.)

10 Q. Have you seen Plaintiffs' Exhibit 25 before?

11 A. No.

12 Q. And you see at the top it says, "Affidavit of David
13 Dygert"?

14 A. Yes.

15 Q. Okay. And if you flip to the fourth page, there's a
16 signature and a date. Do you see that?

17 A. Yes.

18 Q. Does that look like David Dygert's signature to you?

19 A. I really couldn't say if it's his or not. I don't
20 remember what --

21 Q. You're not familiar with his signature?

22 A. I don't remember what it looked like.

23 Q. Okay. That's fair enough. I'd like to direct you to
24 paragraph 14 in the affidavit, which is on page 3. Do you
25 see where I am?

1 A. Yes.

2 Q. It says, "Since its creation in March 1997, the Dygert
3 Seating Division of Flexsteel operated in a similar
4 fashion as Dygert Seating, Inc., had operated at the
5 Marina Drive and Cooper Drive manufacturing sites in
6 1996." Do you see that?

7 A. Yes.

8 Q. Do you agree with that statement?

9 A. Yes.

10 Q. Okay. And did you work at that particular facility from
11 about 1992 until about 2007?

12 A. Yes.

13 Q. And is it fair to say during the duration of your
14 employment that the business operated in essentially the
15 same manner?

16 A. Yes.

17 Q. Did you go to college?

18 A. No.

19 Q. Did you finish high school?

20 A. Yes.

21 Q. I hate to ask this, but what year?

22 A. 1969.

23 Q. All right. And you started at Dygert Seating in '92,
24 correct?

25 A. Yes.

1 Q. What were you doing before you went to work for Dygert
2 Seating in 1992?

3 A. I worked for a van conversion company.

4 Q. What was their name?

5 A. Midway Truck & Coach.

6 Q. Were they a customer of Dygert Seating?

7 A. No.

8 Q. Were they in the Elkhart area?

9 A. Yes.

10 Q. How long were you at Midway Truck & Coach?

11 A. Ten years.

12 Q. So roughly '82 to '92, fair to say?

13 A. Yes.

14 Q. What did you -- what were your job -- what was your job
15 title when you were at Midway Truck & Coach?

16 A. Maintenance manager.

17 Q. What type of stuff did you do as the maintenance manager?

18 A. Fixed whatever broke, repaired.

19 Q. Same thing you did at Dygert Seating?

20 A. Yes.

21 Q. And at Flexsteel?

22 A. Yes.

23 Q. And at PBD Corp.?

24 A. Yes.

25 Q. And at Heritage Financial Services?

1 A. Yes.

2 Q. When you were at Midway Truck & Coach, did you have any
3 responsibility for hazardous chemical management?

4 A. Yes.

5 Q. And what was your responsibility for hazardous chemical
6 management?

7 A. I assisted another gentleman in keeping track of what we
8 had for the MSDS's, what chemicals we had, how they were
9 handled.

10 (Mr. Groves left the deposition.)

11 Q. Who was that generally?

12 A. The other man, Chuck Tubbs.

13 Q. Do you know where Mr. Tubbs is today?

14 A. No.

15 Q. When was the last time you saw him?

16 A. I don't really remember. Long time.

17 Q. And when you say you assisted him in hazardous chemical
18 management, can you tell me generally what you did?

19 A. Walked around and looked to see what we had that was in
20 use, checked it against the MSDS book to make sure we had
21 copies of the MSDS for it, looked for things that were
22 being used improperly or disposed of improperly.

23 Q. Did you ever see anything that was being used improperly?

24 A. No.

25 Q. Did you ever see anything that was being disposed of

1 improperly?

2 A. No.

3 Q. Did you have those same basic job duties during your time
4 with Dygert Seating, Flexsteel, PBD, and Heritage?

5 A. Yes.

6 Q. Did you ever see anything that was being used improperly
7 during any of those years?

8 A. No, sir.

9 Q. Did you ever see anything that was being disposed of
10 improperly --

11 A. No.

12 Q. -- during any of those years?

13 A. No, sir.

14 Q. How did you learn the proper way to use hazardous
15 chemicals?

16 A. Through OSHA.

17 Q. Was it a training program?

18 A. Yes.

19 Q. And when did you have that training program?

20 A. Once when I was at Midway and once while employed by
21 Flexsteel.

22 Q. Okay. So on one particular occasion when you worked for
23 Midway Truck & Coach, sometime between 1982 and 1992, you
24 went to a training seminar being put on by OSHA; is that
25 fair to say?

1 A. Yes.

2 Q. Do you know about when that was?

3 A. No, I do not.

4 Q. How long was that seminar?

5 A. It was a one-day class.

6 Q. And where was it?

7 A. Indianapolis.

8 Q. Was it a big seminar with a lot of people?

9 A. Yes.

10 Q. Did you have to take a test?

11 A. No.

12 Q. Did you get any license or certification after you
13 attended?

14 A. Yes.

15 Q. And what did you get?

16 A. Pardon?

17 Q. What sort of license or certification?

18 A. It was a certificate and a little card.

19 Q. It just said you attended the program?

20 A. Yes.

21 Q. And that you were there the whole day?

22 A. Yes.

23 Q. Anything else?

24 A. No.

25 Q. When did you attend the training through OSHA during your

1 time of employment by Flexsteel?

2 A. 6-11-2001.

3 Q. And you got a little card there that helps you out with
4 that. Can you tell me -- before you put that away, can
5 you tell me what that card is?

6 A. Yeah. It's from OSHA, "General Industry Safety & Health,"
7 ten-hour Occupational Safety and Health Training Course.

8 Q. Okay. And do you mind if we get a copy of that --

9 A. No.

10 Q. -- at the break too so we can mark it since you've talked
11 about it.

12 Are there any other cards in your pocket we might
13 need to refer to today so we can get everything copied at
14 once?

15 A. No. There's a parking ticket.

16 Q. Okay. And why did you go to the OSHA training seminar on
17 June 11, '01?

18 A. Just as a refresher thing.

19 Q. Does OSHA have requirements for refresher courses
20 periodically?

21 A. I don't know if they do or not.

22 Q. Why did you go to the OSHA training seminar back when you
23 were working for Midway Truck & Coach?

24 A. To initially learn about the regulation, OSHA regulations.

25 Q. Was it Mr. Tubbs who asked you to go?

1 A. Yes.

2 Q. Did he go with you?

3 A. Yes.

4 Q. Was it his first time?

5 A. I don't know.

6 Q. But it was your first time?

7 A. Yes.

8 Q. And you got a certificate saying that you had attended,
9 correct?

10 A. Yes.

11 Q. Did you get any sort of certification?

12 A. No.

13 Q. Okay. And then sort of working backwards with respect to
14 your job training history here, before 1982, what did you
15 do?

16 A. I worked through a vending company.

17 Q. What were they called?

18 A. South Bend Vending.

19 Q. Did you drive a truck and fill vending machines?

20 A. I repaired them.

21 Q. Some more maintenance work?

22 A. Yes.

23 Q. You repaired the vending machines or the truck or both?

24 A. The vending machines.

25 Q. You didn't work with any hazardous chemicals at that time,

1 did you?

2 A. No.

3 Q. Did you ever have any hazardous chemical training during
4 the time that you worked for South Bend Vending?

5 A. No.

6 Q. How long were you at South Bend Vending?

7 A. I don't really remember.

8 Q. More or less than ten years, do you think?

9 A. Less.

10 Q. Where did you work before South Bend Vending?

11 A. A place called Hedco Engineering.

12 Q. What did they do?

13 A. We built and maintained weighing equipment.

14 Q. What type of weighing equipment?

15 A. Scales, you know, electronic scales.

16 Q. For household use or commercial use?

17 A. It was mostly commercial.

18 Q. Big scales for trucks or --

19 A. No. They were used like in the food industry.

20 Q. So are we talking pounds or tons or --

21 A. Pounds.

22 Q. Okay. And were you one of the people who actually built
23 those scales?

24 A. Yes.

25 Q. Did you work with any hazardous chemicals at that job?

1 A. No.

2 Q. And you didn't receive any training on hazardous chemical
3 handling or management or disposal when you worked that
4 job, correct?

5 A. No.

6 Q. Is that correct?

7 A. Yes, that's correct.

8 Q. How long were you with Hedco Engineering?

9 A. Less than five years.

10 Q. So we're getting close to 1969. Where were you before
11 Hedco Engineering?

12 A. Before then, I worked for a place called Bob's Repair
13 Service.

14 Q. What did you do there?

15 A. Maintenance, appliances.

16 Q. Fixed refrigerators?

17 A. Stoves, refrigerators, dishwashers.

18 Q. Did you have any sort of training concerning the proper
19 use, handling or disposal of hazardous chemicals when you
20 were at Bob's Repair?

21 A. No.

22 Q. Did you guys use any hazardous chemicals when you worked
23 at Bob's Repair?

24 A. No.

25 Q. Was that your first job after high school?

1 A. Yes.

2 Q. Were you just sort of a handy person and that's how you
3 wound up in that position, or how did that come to be?

4 A. I was a handy person, and I knew the people.

5 Q. You knew the owners?

6 A. Yes.

7 Q. How did you wind up coming to be employed by Mr. Dygert in
8 1992?

9 A. My wife worked there, and they were looking for a
10 maintenance person. She told me about it.

11 Q. What was your position when you were first hired by
12 Mr. Dygert?

13 A. Maintenance.

14 Q. Were you the head of maintenance, or did you report to
15 somebody else?

16 A. I was the only maintenance person.

17 Q. Do you remember what your title was? Was it just
18 maintenance or some special --

19 A. Just maintenance.

20 Q. Okay. And you graduated from high school, correct?

21 A. Yes.

22 Q. Okay. Did you ever take any college courses?

23 A. No.

24 Q. Did you ever attend any training courses or seminars other
25 than the two one-day OSHA programs that you told me about?

1 A. No.

2 Q. Have you had any sort of schooling or training in the area
3 of chemistry?

4 A. No.

5 Q. With the exception of the two OSHA classes that you told
6 me about, have you had any schooling or training in the
7 area of hazardous chemical management?

8 A. No.

9 Q. So the only time you've ever been trained on how to
10 properly handle hazardous chemicals were the two one-day
11 OSHA training programs; is that fair to say?

12 A. Yes.

13 Q. After you were hired by Mr. Dygert to be the maintenance
14 man for Dygert Seating, did there come a time when another
15 maintenance person was hired that you then supervised?

16 A. Yes.

17 Q. Do you know about when that was?

18 A. No.

19 Q. More or less than ten years?

20 A. Less.

21 Q. And who was that person?

22 A. We had one gentleman named Jerry Barnes, and we actually
23 had two other guys that I cannot remember their names.

24 Q. Okay. And then you stayed employed as the head of
25 maintenance until 2007, right?

1 A. Yes.

2 Q. Did Mr. Barnes stay employed as well, or did he leave the
3 company prior to '07?

4 A. He was let go before that.

5 Q. Was he let go when Flexsteel purchased the assets?

6 A. I don't remember.

7 Q. Do you know why he was let go?

8 A. No, I don't.

9 Q. Are you the person who fired him, or did somebody else do
10 that?

11 A. It would have been someone else.

12 Q. Who did you report to?

13 A. Greg Lucchese.

14 Q. Did you report to Mr. Lucchese the entire time you were
15 employed there?

16 A. No.

17 Q. So let's back up. So starting in '92 when you were hired,
18 was Mr. Lucchese your boss, or did you report to somebody
19 else?

20 A. At the beginning, it was Greg Lucchese. Then he left and
21 I reported to a gentleman named Charlie Mabie.

22 MR. MICHAEL: Okay. Let's -- I'm seeing a glare
23 in his glasses. Is it looking okay in the video or
24 should we shut the blinds?

25 VIDEOGRAPHER: I can see the glare. I can see

1 his eyes too.

2 MR. MICHAEL: Why don't we shut -- because it's
3 kind of distracting. We're just going to go ahead
4 and shut that so the video looks good. Is that
5 better?

6 VIDEOGRAPHER: Yes.

7 BY MR. MICHAEL:

8 Q. Okay. So then before we had to stop and close our
9 blinds -- is that better for you probably, I assume, too?

10 A. I was fine.

11 Q. Okay. In the beginning, you reported to Mr. Lucchese.
12 And then sometime thereafter you reported to a Charlie
13 Mabie?

14 A. Yes.

15 Q. Is that his name, M-a-y-b-e?

16 A. M-a-b-i-e, I believe.

17 Q. About how long did you report to Mr. Mabie?

18 A. Two to three years.

19 Q. About how long had you reported to Mr. Lucchese before
20 Mr. Mabie became your direct supervisor?

21 A. Maybe five, six.

22 Q. Okay. So it was Mr. Mabie your supervisor then after
23 Flexsteel had acquired the assets?

24 A. No. At that time Jim Fransen came in.

25 Q. And I know it's hard to go back and remember these dates,

1 but I'm trying to piece this together here. So you
2 started working for Dygert Seating in 1992, and Greg
3 Lucchese was your direct supervisor, correct?

4 A. Yes.

5 Q. Now, you worked for him for a period of time and then
6 Charlie maybe became your direct supervisor, correct?

7 A. Yes.

8 Q. And then in March of 1997, Flexsteel purchased the assets
9 of Dygert Seating and Jim Fransen became your direct
10 supervisor; is that correct?

11 A. Yes.

12 Q. And then how long was Mr. Fransen your direct supervisor?

13 A. Until Flexsteel left. And then believe it or not, Greg
14 Lucchese came back.

15 Q. Did Mr. Greg Lucchese work for Flexsteel?

16 A. No, I don't think so.

17 Q. Okay. I'm asking because you said he came back.

18 A. Yeah. He came back after Dave bought -- or PBD -- there's
19 too many companies to try --

20 When PBD was there, Greg came back.

21 Q. Do you know if he left at the time of the Flexsteel
22 acquisition, or do you not know?

23 A. Not really.

24 Q. Okay. And over the years then, the maintenance department
25 you've been in charge of had from -- in the beginning it

1 was just you. And then you had one employee. He was let
2 go. And then you had two other employees whose names
3 you've forgotten, correct?

4 A. Yes.

5 Q. Is that the scope of the maintenance department from '92
6 to 2007 at that facility, to the best of your
7 recollection?

8 A. Yes.

9 Q. Did the two gentlemen that you can't remember their names
10 work for PBD Corp.?

11 A. No.

12 Q. Were they before or after that?

13 A. It would have been before that.

14 Q. So after Mr. Dygert formed PBD Corp. and purchased certain
15 assets back from Flexsteel, did it go back to you being
16 the maintenance guy?

17 A. Yes.

18 Q. And then was it you by yourself until 2007 when Heritage
19 sold the business?

20 A. Yes.

21 Q. As the maintenance person -- well, let's break this down
22 in time. Back when you first started working for
23 Mr. Dygert in 1992 as the head of maintenance and sole
24 maintenance person, what were your basic job duties?

25 A. Taking care of all the equipment, the building, grounds.

1 Q. What do you mean when you say "take care of equipment"?

2 A. Keep everything running, do preventative maintenance,
3 daily maintenance as it broke down.

4 Q. So you cleaned the machinery; is that correct?

5 A. If need be, yes.

6 Q. You repaired the machinery; is that correct?

7 A. Yes.

8 Q. You did the preventative maintenance hoping it wouldn't
9 break down; fair to say?

10 A. Yes.

11 Q. Were you the person most familiar with the equipment at
12 Dygert Seating during the timeframe from 1992 until 1997?

13 A. Yes.

14 Q. And then you said you took care of the grounds. What do
15 you mean by that?

16 A. Trim trees, bushes, let the landscaper in or the mowing
17 crew in through the gate when they needed in.

18 Q. Did you dig the drainage trench at the base of the loading
19 dock at the frame shop?

20 A. No.

21 Q. Was it already there when you were hired?

22 A. Yes.

23 Q. Did you ever do any excavation of any type on either
24 property, the Cooper Drive property or the Marina Drive
25 property?

1 A. Yes.

2 Q. What type of excavation did you do?

3 A. At the main plant, we -- or I dug out -- they had the same
4 type of truck docks there with the little drainage area in
5 the back. I dug the dirt that had washed down in there
6 and accumulated off the top of the gravel.

7 Q. Okay. To make sure I understand, at the main plant there
8 was a loading dock area and there was a ramp, a concrete
9 ramp out front that sloped down towards the building?

10 A. Yes.

11 Q. And at one point in time dirt had washed in there from the
12 parking lot?

13 A. Yes.

14 Q. And you dug that out?

15 A. Yes.

16 Q. Did you do any other type of excavation on either
17 property?

18 A. Yes.

19 Q. Okay. What other type of excavation did you do?

20 A. At the Cooper Drive building, there was an oil spill,
21 hydraulic fluid there. I broke up the asphalt, dug the
22 dirt out and had it hauled away.

23 Q. And that's the 2001 oil spill that you mentioned, I think
24 in your affidavit?

25 A. Yes.

1 Q. When you say you broke up the asphalt, how did you do
2 that?

3 A. With a hammer drill and a sledgehammer.

4 Q. Did anybody help you?

5 A. No.

6 Q. And then did you dig soil up underneath the asphalt?

7 A. Yes.

8 Q. Just a shovel or a backhoe, or what did you use?

9 A. A shovel.

10 Q. Anybody help you with that?

11 A. No.

12 Q. What did you do with the asphalt and the dirt that
13 you removed?

14 A. Put it into a dumpster, which was emptied into the
15 compactor.

16 Q. Okay. I've heard the term "hopper" used with respect to
17 certain dumpsters on the property. Are you familiar with
18 that term?

19 A. Yes.

20 Q. Is the dumpster that you're talking about, was that
21 commonly referred to as a hopper or is that something
22 different?

23 A. It could go either way. Some people -- what I consider a
24 dumpster is a metal container, sits on the floor, you
25 throw your trash in it, and then you dump that into the

1 compactor. A lot of people will call that dumpster a
2 hopper.

3 Q. And that's what you put the soil and the asphalt into?

4 A. Yes.

5 Q. Was that sitting then adjacent to the frame shop, or did
6 you have to take it down --

7 A. The compactor?

8 Q. No, the dumpster that you put the stuff in.

9 A. The dumpster was sitting next to the hole I was digging
10 while I was digging it, yes.

11 Q. Okay. Did you move it over there with a forklift, or was
12 it just sitting there?

13 A. Forklift.

14 Q. So you moved the dumpster over next to the hole with a
15 forklift, and then you broke up the asphalt with a hammer
16 drill and a sledgehammer, and you put the asphalt in the
17 dumpster, correct?

18 A. Yes.

19 Q. And then you took a shovel and shoveled out dirt and put
20 that in the dumpster, correct?

21 A. Yes.

22 Q. How deep did you shovel that?

23 A. It was almost three feet.

24 Q. So it was a pretty good-sized hole?

25 A. Yeah. It was a biggie.

1 Q. A biggie. And then once the dumpster was full, did you
2 use the forklift to then take it to the compactor at the
3 main plant?

4 A. Yes.

5 Q. And what did you do, lift the dumpster up and tip it into
6 the compactor?

7 A. Yes.

8 Q. And then the compactor just smashed the soil and the
9 asphalt into the regular roll-off that Himco took away?

10 A. Yes.

11 Q. You understand what I mean by "roll-off," correct?

12 A. Yes.

13 Q. That was a 45-yard roll-off I believe set out in front of
14 the main plant. Does that sound about right?

15 A. Yes.

16 Q. That's what the compactor would push the trash into,
17 correct?

18 A. Yes.

19 Q. Did you do any other type of excavation on either
20 property?

21 A. Occasionally digging up a sprinkler head.

22 Q. And I forgot to ask you. When you shoveled out the dirt
23 and when you took out the asphalt where the oil had
24 spilled from the barrel at the frame shop, did you do any
25 sort of sampling or testing of the soil or asphalt?

1 A. No.

2 Q. I think you've told me, but just to make sure -- we got to
3 stop and change the tape anyway.

4 You're not aware of any soil sampling ever being done
5 on any property, correct, at the time that you worked
6 there?

7 A. No, I'm not.

8 Q. What about any groundwater testing, are you aware of any
9 of that?

10 A. Done actually on the property, no.

11 Q. Why did you qualify your answer that way?

12 A. Well, toward the end, getting toward 2007, I can remember
13 seeing -- I'm not sure who it was -- but they were doing
14 drilling across the street and down the street from us.

15 Q. In connection with the Geocel contamination?

16 A. Apparently, yes.

17 MR. MICHAEL: Okay. We need to change our tape.

18 So now's a good time to take a break.

19 VIDEOGRAPHER: Off the record at 11:29.

20 (Recess taken.)

21 (Mr. Schmidt joined the deposition.)

22 VIDEOGRAPHER: Back on the record at 11:46.

23 Please continue.

24 BY MR. MICHAEL:

25 Q. Mr. Alexander, I'm going to ask the court reporter to hand

1 you a document that we're going to mark as 26. I'd like
2 you to please take a look at it.

3 (Plaintiffs' Exhibit 26 marked for
4 identification.)

5 Q. Do you recognize Plaintiffs' Exhibit 26?

6 A. Yes.

7 Q. Is that a true and accurate copy of the card that you had
8 in your pocket that you showed us earlier?

9 A. Yes.

10 Q. And that's the OSHA training, the one-day course that you
11 took when you were employed by Flexsteel, correct?

12 A. Yes.

13 Q. That's the certification card you got?

14 A. Yes.

15 Q. Where was that training conducted?

16 A. In New Paris.

17 Q. Was it a program that was sponsored by Flexsteel?

18 A. I don't know.

19 Q. Let me -- I should clarify that.

20 When you said "in New Paris," did you mean the New
21 Paris Flexsteel facility?

22 A. Yes. It was at their plant.

23 Q. Okay. And how many people were at that particular
24 training program?

25 A. I don't remember.

1 Q. More than ten?

2 A. Yes.

3 Q. Were they other Flexsteel employees, or did they come from
4 all over the place?

5 A. That I couldn't really say. I don't know.

6 Q. Okay. And the trainer is identified as a Dale J. Sabers.
7 Do you see that?

8 A. Yes.

9 Q. Was that a Flexsteel employee?

10 A. No.

11 Q. Do you know where he was from?

12 A. No.

13 Q. He just came to the New Paris plant and offered this
14 ten-hour course in OSHA, and you went from Elkhart to New
15 Paris and attended the course, correct?

16 A. Yes.

17 Q. There wasn't any RCRA training offered at that particular
18 program, correct?

19 A. Any what?

20 Q. RCRA?

21 A. No.

22 Q. Have you ever had any RCRA training?

23 A. No.

24 Q. On the back of the card, which would be at the bottom of
25 Plaintiffs' 26, it says, "OSHA recommends outreach

1 training program courses as an orientation to occupational
2 safety and health for workers." Do you see that?

3 A. Yes.

4 Q. Did you understand this was an orientation program for
5 you?

6 A. Yes.

7 Q. And then it says, "Participation in these classes is
8 voluntary." And then it says, "Workers must receive
9 additional training on specific hazards of their job." Do
10 you see that?

11 A. Yes.

12 Q. And you never received any additional training on specific
13 hazards of your job, correct?

14 A. Through OSHA, no.

15 Q. What about through anything?

16 A. Just personal reading.

17 Q. On-the-job experience? What do you mean by that?

18 A. I bought new OSHA manuals, subscribed to Occupational
19 Health and Safety magazine. Read that.

20 Q. So you read some additional materials, but never had any
21 additional training?

22 A. No.

23 Q. Is that correct?

24 A. That's correct.

25 Q. How many times were you at the New Paris plant?

1 A. Twice.

2 Q. And you were at the New Paris plant one time for OSHA
3 training. And what was the other time?

4 A. I went down to pick up some frames.

5 Q. What do you mean "went down to pick up some frames"?

6 A. We needed frames at the shop up here in Elkhart, so I
7 drove down and picked them up. They couldn't deliver them
8 fast enough to us.

9 Q. So in Elkhart you needed some particular frames to finish
10 a product that you were making. So you went to New Paris,
11 picked them up and brought them back; is that correct?

12 A. Yes.

13 Q. Okay. I'm going to ask the court reporter to hand you a
14 document that we're going to mark as Plaintiffs' Exhibit
15 27.

16 (Plaintiffs' Exhibit 27 marked for
17 identification.)

18 Q. Do you recognize Plaintiffs' Exhibit 27?

19 A. Yes.

20 Q. Can you tell me what it is?

21 A. Copies of the materials that I brought.

22 Q. Plaintiffs' Exhibit 27 is a true and accurate copy of the
23 documents that you brought with you to the deposition
24 today in response to our subpoena; is that fair to say?

25 A. Yes.

1 Q. We will go through and talk about some specific documents
2 in that in a minute.

3 But first I want to hand you a document that we're
4 going to mark as Plaintiffs' Exhibit 28 and ask you about
5 it.

6 (Plaintiffs' Exhibit 28 marked for
7 identification.)

8 Q. Have you seen Exhibit 28 before?

9 A. No.

10 Q. Okay. Well, I just want you to look at the top e-mail
11 from Kelly Hartzler to Thomas Barnard, was copied to me
12 and several other people. Do you see that?

13 A. Yes.

14 Q. And it says, "Subject: RE: Flexsteel's Master List of
15 Hazardous Materials." And it says, "Tom, Rod made the
16 Master List of Hazardous Chemicals Exhibit 16 in the June
17 23 deposition; it is the back of the Hazard Communication
18 Program. Jerry had not located the rest of the binders,
19 except MSDS sheets for the Premium Adhesive and Silicone
20 spray, which were also produced. I believe these docs are
21 at Flex01," and then the Bates number 22326 through 22331.
22 Do you see that?

23 A. Yes.

24 Q. Do you remember giving MSDS sheets to Ms. Hartzler in
25 connection with this litigation?

1 A. Yes.

2 Q. I'm going to hand you some documents we're going to mark
3 as Plaintiffs' Exhibit 29 and ask you to take a look at
4 them.

5 (Plaintiffs' Exhibit 29 marked for
6 identification.)

7 Q. Do you recognize Plaintiffs' Exhibit 29?

8 A. Yes.

9 Q. And is Plaintiffs' Exhibit 29 a true and accurate copy of
10 the Material Safety Data Sheets that you provided to
11 Flexsteel's counsel in connection with this litigation?

12 A. Yes, it is.

13 Q. Where did you find those two MSDS sheets that are marked
14 as Plaintiffs' Exhibit 29?

15 A. In the copy of the Hazard Communication Program that I
16 had. They were what I used as samples to show people how
17 to read the MSDS sheet.

18 Q. Okay. And just so we can have a clear record, I think I
19 know what you're talking about by Hazard Communication
20 Program. But can you look at Plaintiffs' Exhibit 16 and
21 tell me if that's what you're referring to?

22 A. Yes.

23 Q. Did you have a copy of that at your house?

24 A. Yes, I did.

25 Q. Why did you have a copy of that at your house?

1 A. I wrote the program for the company, and I kept a copy of
2 it in my office.

3 Q. You have an office in your home?

4 A. Well, at work. And then when they closed the building
5 there and Scope bought us, I just brought it home with my
6 personal stuff that was in the office.

7 Q. When you say "I wrote the program," does that mean you
8 wrote the document that's marked as Plaintiffs' Exhibit
9 16?

10 A. Yes, sir.

11 Q. Do you have any other documents at your home related to
12 your employment with Flexsteel, besides these two MSDS
13 sheets and the Hazard Communication Program that we've
14 marked as Exhibit 16?

15 A. I'm not sure.

16 Q. In fairness -- and I still haven't had time to go through
17 Plaintiffs' Exhibit 27 thoroughly yet. I'll do that when
18 we take a break for lunch.

19 But there are some additional documents in here that
20 I want to ask you where they came from. They may be
21 related to your employment; does that sound right?

22 A. Yes.

23 Q. There's a handwritten list we talked about earlier.

24 A. Yes.

25 Q. Is it fair to say as we sit here today that you've done

1 your best to search every possible location you can think
2 of for any documents related to your employment, and you
3 have provided them to Flexsteel's counsel and brought them
4 with you today in connection with our subpoena?

5 A. Yes.

6 Q. Now, in Ms. Hartzler's e-mail she mentions that you had
7 not located the rest of the binders, referring to the MSDS
8 sheets, I believe.

9 A. Yes.

10 Q. Do you think you might have copies of MSDS binders?

11 A. I don't think so. I don't remember bringing them home. I
12 know I was going to. Because when Scope bought the
13 company, they came in; and everything that was left, they
14 said basically throw away. And I knew better that a lot
15 of this stuff should be kept. But I have not been able to
16 find the MSDS, the actual binder. So I don't think I've
17 got it.

18 Q. So to your knowledge, the MSDS binder, the actual copy
19 that had been in use at the facilities on Marina and
20 previously Cooper is gone; is that fair to say?

21 A. Yes, unless Dave or somebody like that happened to pick it
22 up.

23 Q. You're talking about Dave Dygert, right?

24 A. Yes.

25 Q. And then I guess we got on this line of questioning

1 because I was curious that you had the MSDS sheets at your
2 house. You explained you had them because you wrote the
3 Hazard Communication Program and they were attached to it?

4 A. Yeah.

5 Q. But there are some other documents we've talked about
6 today, like Exhibit 21.

7 A. Right.

8 Q. Why did you have that at your house?

9 A. That was just something that I found in a notebook. It
10 would have been from when I did one of my walk-throughs
11 through the plant checking the materials we had actually
12 against the MSDS book.

13 Q. Okay. And I believe your testimony earlier today was that
14 you thought that these notes were from sometime around the
15 time Flexsteel acquired the assets of Dygert Seating; is
16 that correct?

17 A. Yes.

18 Q. How did those notes from about 1997 wind up in your house?

19 A. I'm a pack-rat. I'm a hoarder.

20 Q. So you just tucked them in a notebook and took them home
21 with you one day?

22 A. Yep.

23 Q. Do you know when you took them home?

24 A. No. It probably would have been at the end when I was
25 cleaning out my office. I mean, stuff that was in my

1 desk, I just shoved it in a box and took it home.

2 Q. You think you probably brought it home around 2007,
3 correct?

4 A. Yeah.

5 Q. Because after Scope Technologies purchased all the assets,
6 you cleaned out your desk, kept everything you wanted and
7 brought it home with you, correct?

8 A. Yes.

9 Q. Let's go back to Plaintiffs' Exhibit 22 for just a moment.

10 Okay. And we talked about this just a little bit
11 earlier today, but I want to go back and go over a few
12 more things. Exhibit 22 is a copy of the affidavit you
13 submitted in connection with this litigation, correct?

14 A. Yes.

15 Q. Signed on June 6, 2011?

16 A. Yes.

17 Q. And did you -- did you type this particular document we
18 marked as Exhibit 22?

19 A. No.

20 Q. Okay. Did you -- when Mr. Devetski and Ms. Hartzler met
21 with you and your wife at the restaurant, did they already
22 have a copy of this or did they ask you questions and then
23 give you this later?

24 A. They asked questions.

25 Q. Okay. So you met with them at the restaurant, they asked

1 questions, took notes, presumably prepared the affidavit,
2 and then sent it to you later and asked you to look over
3 it; and if it was okay, sign it. Fair to say?

4 A. Yes.

5 Q. Did you receive any input from Cindy in connection with
6 the substance of this affidavit before you signed it?

7 A. No.

8 Q. Did you review any documents before signing this affidavit
9 that we've marked as Plaintiffs' Exhibit 22?

10 A. No.

11 Q. Did you give Ms. Hartzler your documents related to the --
12 to your employment with Flexsteel and Dygert before or
13 after signing the affidavit?

14 A. Before.

15 Q. Okay. And then in paragraph 2 you say, "I worked for
16 Dygert Seating, Inc., from 1992 until approximately March
17 1997." Do you see that --

18 A. Yes.

19 Q. -- and in the end you say you worked in the maintenance
20 department, correct?

21 A. Yes.

22 Q. And we've covered sort of what you did in the maintenance
23 department, at least with respect to maintaining the
24 outside grounds and the equipment, correct?

25 A. Yes.

1 Q. One question I did have, back to what you had talked about
2 with respect to the grounds work that you did; you talked
3 about some excavation?

4 A. Yes.

5 Q. And you had mentioned at one time you had to excavate the
6 area at the bottom of the loading dock next to the main
7 plant.

8 A. Yes.

9 Q. Was that because the drain in that area had become clogged
10 with the dirt and the debris?

11 A. Yes.

12 Q. Okay. So it had the same kind of gravel drain as at the
13 frame shop?

14 A. Yes.

15 Q. And then in paragraph 3 you say, "When I began working for
16 Dygert Seating, Inc., in 1992, I created a Hazard
17 Communication Program for that business." Do you see
18 that?

19 A. Yes.

20 Q. Okay. So -- and we've marked a copy of a Hazard
21 Communication Program as Exhibit 16. Do you have that in
22 front of you?

23 A. Yes.

24 Q. Did you create that document in 1992?

25 A. Yes.

1 Q. And then in your paragraph 3 it says, "I maintained this
2 program through my employment with the Dygert Seating
3 Division of Flexsteel and PBD Corporation." Do you see
4 that?

5 A. Yes.

6 Q. In your affidavit? So essentially it's your testimony
7 that you wrote the document that we've marked as
8 Plaintiffs' Exhibit 16 in 1992 and then maintained it
9 until approximately March of 19 -- or March of 2007; is
10 that correct?

11 A. Yes.

12 Q. Well, until 2007. I'm not sure you told us the month.
13 But it's fair to say you wrote the Hazard Communication
14 Program we've marked as Plaintiffs' Exhibit 16 in 1992 and
15 maintained it until 2007, correct?

16 A. Yes.

17 Q. Now, I'd like for you to please take a look at Plaintiffs'
18 Exhibit 9.

19 Do you have Plaintiffs' Exhibit 9 in front of you?

20 A. Yes.

21 Q. Now, have you ever seen Plaintiffs' Exhibit 9 before?

22 A. No.

23 Q. I can represent to you that Plaintiffs' Exhibit 9 as it
24 says on the top there are "Responses of Defendant
25 Flexsteel Industries, Inc., to Plaintiffs' First Set of

1 Interrogatories." Okay?

2 A. Yes.

3 Q. And in the Interrogatory No. 1 on page 3 --

4 A. Okay.

5 Q. It says, "Identify each person answering these
6 interrogatories. For each of the persons identified state
7 the following." And there are some subparts. And then if
8 you turn to the next page, under "Response" in paragraph
9 A -- do you see that?

10 A. Yes.

11 Q. It says, "I am Carl Breen, Flexsteel's controller. I
12 spoke with the following Flexsteel employees in order to
13 answer the various interrogatories: Tim Hall, Ron
14 Klosterman, Tom Burkart, Jim Gilbertson, Todd Van Der
15 Jagt, and former employee Rita Stephan. I also received
16 information from former employee, Jerry Alexander;" do you
17 see that?

18 A. Yes.

19 Q. Do you remember providing information to Mr. Breen in
20 connection with Flexsteel's responses to the
21 interrogatories served by the plaintiffs in this
22 litigation?

23 A. No, I don't.

24 Q. Do you know who Carl Breen is?

25 A. No.

1 Q. Have you ever talked to Mr. Breen?

2 A. Not to my knowledge.

3 Q. If you turn to Interrogatory No. 15, it's on page 15.

4 MR. MICHAEL: Yes. Thank you, John.

5 A. Okay.

6 Q. It says, "List and explain all actions taken by Flexsteel
7 to," and in (a) it says, "Maintain or prevent
8 environmental contamination from releases of hazardous
9 materials at your upholstered furniture manufacturing
10 sites, including the facilities;" and, (b), "Prevent
11 hazardous material contamination within the soil and/or
12 groundwater within your upholstered furniture
13 manufacturing sites' property boundaries, including the
14 facilities, from migrating to off-site properties." Do
15 you see that?

16 A. Yes.

17 Q. And then there's a response and there's some objections.
18 And if you turn to the next page, page 16, it says, "Jerry
19 Alexander reportedly created a Hazard Communication
20 Program for the bankrupt entity Dygert Seating, Inc.,
21 which he maintained throughout his employment with the
22 former Dygert Seating Division of Flexsteel." Do you see
23 that?

24 A. Yes.

25 Q. Okay. And then it says, "This compliance program included

1 written policies and formal training. Mr. Alexander also
2 trained employees of the former Dygert Seating Division of
3 Flexsteel in OSHA compliance on an annual basis, which
4 included how to read MSDS sheets and how to properly
5 handle hazardous chemicals." Do you see that?

6 A. Yes.

7 Q. Is that information correct?

8 A. Yes.

9 Q. Okay. You did annual training for employees of the Dygert
10 Seating Division of Flexsteel in OSHA compliance?

11 A. Yes.

12 Q. And you also taught employees of the Dygert Seating
13 Division of Flexsteel how to read MSDS sheets and how to
14 properly handle hazardous chemicals; is that correct?

15 A. Yes.

16 Q. And then it says, "Mr. Alexander also maintained a Master
17 List of Hazardous Materials at the former Dygert Seating
18 Division of Flexsteel. This list was maintained in the
19 break room with a binder including MSDS sheets for the
20 materials listed, and the Hazard Communication Program
21 policies." Do you see that?

22 A. Yes.

23 Q. Now, you talked earlier about an MSDS binder that you were
24 unable to locate. Do you remember that testimony?

25 A. Yes.

1 Q. Was that binder maintained by you in the break room?

2 A. Yes.

3 Q. Why did you keep it in the break room?

4 A. So it was accessible to all the employees.

5 Q. To anybody who came in?

6 A. Yeah. It was right next to the -- you know, the law
7 requirement posters.

8 Q. The law requirement poster?

9 A. Yeah, for federal minimum wage and all that.

10 Q. Okay. So there were some posters on the wall that had
11 federal minimum wage and all that?

12 A. Yes.

13 Q. And then right next to that was a binder with MSDS sheets?

14 A. Yes.

15 Q. Was it one binder or more than one?

16 A. One.

17 Q. Is that the only location within Flexsteel's operations
18 where an MSDS binder was kept?

19 A. No. There was also one kept in the Cooper Street
20 building.

21 Q. And where was the one in Cooper Street located?

22 A. In their break room.

23 Q. Any idea what happened to that one?

24 A. No.

25 Q. Were the binders building specific, meaning did the binder

1 in the break room on the Cooper Street property only
2 relate to chemicals that were being used in the frame
3 shop?

4 A. No.

5 Q. And the same would be for the main plant, correct?

6 A. Yes.

7 Q. So the MSDS binder had chemicals that were in use, either
8 in the main plant or in the frame shop or in both
9 places --

10 A. Yes.

11 Q. -- correct? And then after where I was reading it says,
12 "He also walked through both the Cooper Drive and Marina
13 Drive manufacturing sites twice a year and wrote down
14 every product containing a chemical, whether used in the
15 manufacturing process or in the office." Do you see that?

16 A. Yes.

17 Q. And is that correct?

18 A. Yes.

19 Q. Okay. And is Plaintiffs' Exhibit 21, that we've talked
20 about earlier today, an example of a list that you made
21 when you were making one of your trips through the
22 manufacturing sites to write down every product containing
23 a chemical?

24 A. Yes, it is.

25 Q. And that's the only list that you still have?

1 A. Yes.

2 Q. From the entire time you were employed from 1992 to 2007?

3 A. Yes.

4 Q. And then it says, "He used this process to update the
5 Master List of Hazardous Materials and ensure that he had
6 MSDS sheets on file." Do you see that?

7 A. Yes.

8 Q. Is that correct?

9 A. Yes.

10 Q. Now, how would you do that?

11 A. I wrote the list down from the MSDS booklet book, the
12 binder. And then as I would walk through the buildings, I
13 would check what I found in the plant or the building
14 against that list rather than carrying, you know, the
15 whole book around with me all the time.

16 Q. Okay. So let's break this down. Let's talk about the
17 list that's marked as Plaintiffs' Exhibit 21. Actually,
18 let's not get that out of order. That's in a different
19 exhibit. We have to keep our exhibits numbered straight
20 so we have a clear record. I think it might be upside
21 down. Maybe Angela can help you.

22 A. There we go. Okay.

23 Q. You got it now?

24 A. Yeah.

25 Q. Okay. So when you were preparing the list we've marked as

1 Plaintiffs' Exhibit 21, you went to the break room and got
2 the MSDS binder, correct?

3 A. Yes.

4 Q. And then you went MSDS sheet by MSDS sheet and wrote down
5 each product? How did you know what information to write
6 down?

7 A. Each product and who, you know, who manufactured it.

8 Q. Okay. So, for instance, on the first page of Plaintiffs'
9 Exhibit 21, the first entry says, "Texaco."

10 A. Yes.

11 Q. Is that referring to the manufacturer of the product?

12 A. Yes.

13 Q. And then it says, "Antifreeze/Coolant"?

14 A. Yes.

15 Q. Is that the name of the product?

16 A. Yes.

17 Q. And that's the name listed on the MSDS sheet?

18 A. Yes.

19 Q. And what are the numbers next to that?

20 A. Those are the hazard classifications.

21 Q. And that's information that also comes from the MSDS
22 sheet?

23 A. Yes.

24 Q. Do you know what the numbers represent, the 2-1-0?

25 A. Yeah, the health affects, flammability and how reactive it

1 is with water.

2 Q. And I notice that some of this list appears to be in
3 alphabetical order, and then it kind of gets out of
4 alphabetical order. Is that just a function of the way
5 the MSDS sheets were kept in the binder?

6 A. Yes.

7 Q. Is there a reason that the 604 hi-temp aerosol adhesive is
8 number 2 on the list?

9 A. No.

10 Q. Filed under adhesive perhaps?

11 A. Probably, yeah.

12 Q. And, again, so that I can understand your notes here. So
13 you took the MSDS sheet for 604 hi-temp aerosol adhesive
14 and you looked to see who the manufacturer was and you
15 wrote down Bender's?

16 A. Yes.

17 Q. And then you looked at product name and you wrote down,
18 "604 hi-temp aerosol adhesive"?

19 A. Yes.

20 Q. And then you looked at the HMIS code and you wrote down,
21 "2-4-0," correct?

22 A. Yes.

23 Q. Now, on the second page of Exhibit 21, there's some
24 handwriting on the bottom right-hand corner. I think it's
25 a dash. I think it says, "Tour plant to reconcile list

1 with items have on site." Do you see that?

2 A. Yes.

3 Q. Is that your handwriting?

4 A. Yes, it is.

5 Q. Did I read it correctly?

6 A. "Tour plant to reconcile list with items on site," yes.

7 Q. Okay. Does that indicate you were giving this list to
8 somebody else with instructions of what to do?

9 A. No.

10 Q. Why did you write that down?

11 A. Just -- I don't really know at the moment.

12 Q. Is it possible that you might have written that down as an
13 instruction to one of the two people who worked underneath
14 you --

15 A. No.

16 Q. -- to go tour the plant?

17 A. No.

18 Q. You're the only guy who ever toured the plant to look for
19 hazardous chemicals; is that correct?

20 A. No.

21 Q. Why do you say it's not possible that you might have given
22 this list to somebody who worked underneath you and said,
23 "Tour plant to reconcile list with items on site"?

24 A. Because I always did it myself.

25 Q. That was always your job?

1 A. Yes.

2 Q. And then underneath that it says, "Update any MSDS older
3 than two years." Do you see that?

4 A. Yes.

5 Q. And that's not an instruction you wrote for somebody else,
6 correct?

7 A. No, it is not.

8 Q. It's an instruction you wrote for yourself?

9 A. Yes.

10 Q. Why did you write yourself instructions if you did this
11 every six months?

12 A. I write notes for almost everything.

13 Q. On the first page of Exhibit 21, there's some handwriting
14 there. It's a lot more difficult to read. Is that your
15 handwriting?

16 A. Yes, it is.

17 Q. Can you tell me what that says?

18 A. "Determination of present and future toxicity limits,
19 predisposed to TSS by previous MC exposure above PEL and
20 STEL for methylene chloride producing" or -- "resulting in
21 unconsciousness."

22 Q. And why did you write that down?

23 A. Because that was to be a reminder for me on the glue and
24 stuff that had methylene chloride in it.

25 Q. What does "TSS" stand for?

1 A. Toxic Shock Syndrome.

2 Q. And what does the "MC" stand for?

3 A. That was Midway Truck & Coach.

4 Q. MC is Midway Truck & Coach?

5 A. Yes.

6 Q. And is that someone that you purchased products from?

7 A. No. That's where I was overexposed to methylene chloride.

8 Q. Oh, you were overexposed?

9 A. Yes.

10 Q. Okay. Okay. So when you were at Midway Truck & Coach,
11 you were overexposed to methylene chloride. And,
12 therefore, you were predisposed to Toxic Shock Syndrome.
13 And so you wrote the notes on the first page of 21 to
14 yourself so that you'd be careful to stay away from things
15 that had methylene chloride in it?

16 A. Yes.

17 Q. And you had some adhesive with methylene chloride in it,
18 correct?

19 A. Yes.

20 Q. And you also used methylene chloride in buckets to clean
21 glue tips from your spray guns?

22 A. Yes.

23 Q. Did you use methylene chloride anyplace else in the
24 facility?

25 A. Yes.

1 Q. Where else?

2 A. It was used to clean what they call slats on the Gerber
3 cutters.

4 Q. What's a slat on a Gerber cutter?

5 A. It's an aluminum rail that goes from one side of the
6 cutter to the other. It has rubber seals on it and little
7 plastic bristle blocks so that the vacuum can suck the
8 fabric and hold it tight against the table while the
9 cutter operates.

10 Q. And then from time to time the metal slats would get
11 dirty?

12 A. The rubber seals would wear out and I'd have to pull them
13 off and replace them.

14 Q. And when you pulled the rubber seals off the aluminum
15 slat, you'd take some methylene chloride and wipe it down?

16 A. Yes.

17 Q. Did you do that or did somebody do it for you?

18 A. I did that.

19 Q. How did you wipe down the aluminum slats with the
20 methylene chloride?

21 A. Rag and dip it into the methylene chloride and wipe them.

22 Q. So you'd pour some methylene chloride into a five-gallon
23 bucket; is that fair to say?

24 A. Usually a coffee can.

25 Q. Into a coffee can and then dip a rag in there and then

1 wipe down the metal slats?

2 A. Yes.

3 Q. Did you wear gloves?

4 A. Yes.

5 Q. What did you do with your gloves after you were done?

6 A. Threw them in the trash.

7 Q. The general trash?

8 A. Yes.

9 Q. And then that would be taken to the compactor and pushed
10 into the 45-yard rollaway, correct?

11 A. Yes.

12 Q. What about the rag that you used to clean it with?

13 A. It went in the trash also.

14 Q. And then ultimately it wound up in the 45-yard rollaway
15 and Himco took it away?

16 A. Yes.

17 Q. What about the coffee can that you poured the methylene
18 chloride into?

19 A. It eventually would have ended up in the trash.

20 Q. The same general trash?

21 A. Yes.

22 Q. Was there any other source of methylene chloride at the
23 plant?

24 A. The glue that we actually used for the seats, yes, it had
25 methylene chloride in it.

1 Q. Anything else?

2 A. No.

3 Q. Now, on this Exhibit 15 -- or Interrogatory No. 15 that we
4 were just looking at in Exhibit 9, it mentioned that you
5 did the OSHA compliance for the training for the
6 employees, that you taught employees how to read the MSDS
7 sheets, that you maintained the master list of hazardous
8 materials.

9 Is it fair to say that with respect to compliance
10 with environmental rules and regulations between 1992 and
11 2007, you were the person in charge?

12 A. As far as training, yes.

13 Q. Now, why did you qualify that by saying "as far as
14 training"?

15 A. I didn't keep any of the records for what, you know, who
16 was trained or anything like that. I just did the actual
17 training; and if somebody had a question, they would come
18 to me.

19 Q. And who kept the records?

20 A. Human resources.

21 Q. Okay. With respect to compliance with environmental rules
22 and regulations, were you the person in charge?

23 A. I wouldn't necessarily say I was, no.

24 Q. Who in your mind was in charge of compliance with
25 environmental rules and regulations between 1992 and 2007

1 at the frame shop in the main plant?

2 A. I would say Greg Lucchese or --

3 Q. As we sit here today, do you know for sure who was in
4 charge of compliance with environmental rules and
5 regulations between 1992 and 2007?

6 A. As far as actual legal compliance, no.

7 Q. You don't know?

8 A. I don't really know.

9 Q. So it's fair to say that nobody who was in charge of
10 compliance with environmental rules and regulations ever
11 came and consulted with you about, for instance, the
12 master list of hazardous materials that you kept?

13 A. No.

14 Q. That's correct?

15 A. Yes, that's correct.

16 Q. And nobody in charge of compliance with environmental
17 rules and regulations ever came and talked to you about
18 updating MSDS sheets; is that correct?

19 A. That's correct.

20 Q. And if anybody in charge of compliance with environmental
21 rules and regulations ever looked at your master list of
22 hazardous materials, you wouldn't even know about it,
23 correct?

24 A. As far as the list of stuff, no. The only thing I know of
25 for sure is they kept track of who was trained and when

1 they were trained.

2 Q. Okay. Somebody kept track of who had OSHA training and
3 when they were trained, correct?

4 A. Yes.

5 Q. But with respect to your master list of hazardous
6 materials, as far as you know, nobody in charge of
7 compliance with environmental rules and regulations ever
8 came and looked at your list; fair to say?

9 A. Yes.

10 MR. MICHAEL: All right. Let me -- we're getting
11 ready to go to another document. It's 12:27. Why
12 don't we go off the record and talk about a lunch
13 break.

14 VIDEOGRAPHER: Off the record at 12:26.

15 (Recess taken.)

16 VIDEOGRAPHER: Back on the record at 1:09.

17 Please continue.

18 BY MR. MICHAEL:

19 Q. Mr. Alexander, did you talk to anybody at lunch about the
20 substance of your testimony today?

21 A. No.

22 Q. Is there any testimony you want to change or correct?

23 A. No.

24 Q. Mr. Alexander, has anyone told you the source of the
25 groundwater plume that brings us here today?

1 A. No.

2 Q. Do you know the source of the groundwater plume?

3 A. No.

4 Q. If you look at Plaintiffs' Exhibit 27, it's a copy of the
5 documents you brought today in response to our subpoena.

6 Do you have that in front of you?

7 A. Yes.

8 Q. There are a few documents in there I want to ask you
9 about.

10 First off, if you go to the second grouping, and the
11 first page has your handwritten list. It's not Bates
12 numbered, so this is going to be a little tough. But if
13 you flip back four pages, there's an MSDS sheet for
14 Bender's Wholesale Distribution, Inc., and it's for a 604
15 high temperature flex foam adhesive aerosol. Do you see
16 that?

17 A. Yes.

18 Q. Where did that document come from?

19 A. This I believe is one that Kelly got.

20 Q. Kelly gave that one to you?

21 A. Yeah.

22 Q. When she gave you that document, did she talk to you about
23 it?

24 A. Not really. She just said that she found it online, I
25 guess. That was basically it.

1 Q. Okay. And then she showed it to you and you agreed that
2 that was a product that Flexsteel had been using at its
3 manufacturing operations?

4 A. Yes.

5 Q. Do you know how much of the Bender's 604 high temperature
6 flexible foam adhesive Flexsteel was using on a daily
7 basis?

8 A. On a daily basis, no.

9 Q. What about a monthly basis?

10 A. I couldn't even swear to that. It would vary constantly.

11 Q. Depending on how much product they were making?

12 A. Well, this one was used in -- mainly in engineering for
13 prototyping. So, yeah, it would depend on what they were
14 building at the time.

15 Q. And how do you know it was used in engineering for
16 prototyping?

17 A. That's usually where it was kept, and that's where they
18 used it.

19 Q. And you know that because you can remember seeing this
20 can?

21 A. Yes, uh-huh.

22 Q. Did you know at the time you worked for Flexsteel that the
23 Bender 604 high temperature flexible foam adhesive had TCE
24 in it?

25 A. At that time, no.

1 Q. Do you understand that now?

2 A. Yeah. I wasn't familiar with their little shortcut word
3 down here.

4 Q. "Trichlene," you weren't familiar with that word?

5 A. Yeah.

6 Q. Are you familiar with chemical abstract numbers?

7 A. Somewhat.

8 Q. When you were the person responsible for maintaining the
9 master list of hazardous chemicals for Flexsteel, did you
10 know what Trichlene was back then?

11 A. No.

12 Q. Now, you had said that this particular product was
13 primarily used in engineering for prototyping, correct?

14 A. Yes.

15 Q. Where was engineering located physically?

16 A. It started off downstairs in the corner right behind the
17 offices. And then from there, they moved it upstairs
18 above the offices.

19 Q. In the main plant?

20 A. In the main plant, yes.

21 Q. And the usage of this particular adhesive would vary
22 depending on the work being done in engineering with
23 respect to prototyping, correct?

24 A. Yes.

25 Q. Could have been a few cans, could have been more than a

1 few cans, just depended on what they were doing?

2 A. Yes.

3 Q. What happened to the cans once engineering was done with
4 them?

5 A. They would have been thrown in the trash.

6 Q. Just the general trash we talked about earlier?

7 A. Yes.

8 Q. And then taken to the compactor and smashed and put in the
9 roll-off?

10 A. Yes.

11 Q. And then Himco would have hauled it away, correct?

12 A. Yes.

13 Q. If you flip back a few more pages, there's an MSDS sheet
14 for an LPS HDX heavy duty degreaser. And that's the
15 product we talked about earlier, but I didn't have a copy
16 of this document in front of me at the time. Do you
17 remember this morning when we had that conversation?

18 A. Yes.

19 Q. And it lists trichloroethylene as a 90 to 100 percent
20 ingredient in this particular degreaser, correct?

21 A. Yes.

22 Q. Is this a document that came from Flexsteel's counsel?

23 A. Yes.

24 Q. Okay. It was provided to you by Flexsteel's counsel?

25 A. Yes.

1 Q. When did you get this document?

2 A. I don't really remember the date. It would have been
3 whenever they returned all the stuff that I left here for
4 them to copy. I don't remember what day it was.

5 Q. So you brought your documents to Barnes & Thornburg and
6 left them with Barnes to be copied and produced in the
7 litigation, correct?

8 A. Uh-huh, yes.

9 Q. And they gave you this document when you came to pick up
10 your documents?

11 A. Yes.

12 Q. Would that have been before or after you did your
13 affidavit?

14 A. Before.

15 Q. So sometime prior to June 6, 2011?

16 A. Yes.

17 Q. Okay. And we talked before about conversations concerning
18 whether or not this was the degreaser that was being used
19 by Flexsteel. And I believe your testimony was you're
20 really not sure one way or the other. But assuming that
21 this was not the particular LPS degreaser that Flexsteel
22 was using, do you know whether the one they were using had
23 TCE in it?

24 MR. DEVETSKI: I'm going to object because I
25 think that mischaracterizes his prior testimony, but

1 you can answer the question.

2 BY MR. MICHAEL:

3 Q. Let me rephrase then so there's no misunderstanding here.

4 You'll agree with me that this particular LPS heavy
5 duty degreaser contains trichloroethylene 90 to 100
6 percent by weight, correct?

7 A. Yes.

8 Q. Okay. It is possible that there is another LPS green and
9 white can of degreaser that Flexsteel was using that is
10 not the one indicated by this particular MSDS sheet
11 contained in your documents that we've marked as
12 Plaintiffs' Exhibit 27, correct?

13 A. Yes.

14 Q. If so, it's fair to say you don't know what the
15 ingredients in that degreaser were, do you?

16 A. No, I do not remember.

17 Q. Now, on the first page of the stack, it is your
18 handwritten list we've talked about several times today.

19 On the third page, there's an entry for
20 trichloroethylene. Do you see that?

21 A. Yes.

22 Q. And that entry was made by you reviewing an MSDS sheet in
23 the binder in the break room, correct?

24 A. Yes.

25 Q. And you wrote down that the manufacturer was Sunnyside

1 Corp., correct?

2 A. Yes.

3 Q. And you wrote down the product name was trichloroethylene,
4 correct?

5 A. Yes.

6 Q. And then the HMIS code was 2-1-0, correct?

7 A. Yes.

8 Q. How much trichloroethylene did Flexsteel have in its
9 possession when you worked for them?

10 A. That particular product was a half-a-gallon can, I
11 believe.

12 Q. And where did you get that product?

13 A. At a hardware store.

14 Q. And what was it called?

15 A. They referred to it as paint thinner.

16 Q. Who referred to it as paint thinner?

17 A. The can.

18 Q. The can said paint thinner?

19 A. Paint thinner, paint cleaner, yeah.

20 Q. And that was the Sunnyside Corp. can?

21 A. Yes.

22 Q. And when did you purchase a Sunnyside Corp. can labeled as
23 paint thinner?

24 A. When?

25 Q. Yes.

1 A. I do not recall.

2 Q. Okay. Do you know approximately?

3 A. No.

4 Q. So you went -- what hardware store did you go to?

5 A. Palmer True Value.

6 Q. Where is that located?

7 A. North Cassopolis Street in Elkhart.

8 Q. Okay. So at some point in time, and you don't know when,
9 you went to Palmer True Value on North Cassopolis Street
10 in Elkhart and purchased approximately a half-gallon can
11 of paint thinner, correct?

12 A. Yes.

13 Q. And it was produced by Sunnyside and it contained
14 trichloroethylene, correct?

15 A. Yes.

16 Q. Why didn't you write down paint thinner on your
17 handwritten list?

18 A. I don't really know.

19 Q. You would agree with me if you turn to the page before
20 that, there's an entry for a product purchased from
21 Superior Solvents; and that says, "lacquer thinner,"
22 right?

23 A. Yes.

24 Q. And you didn't write the ingredients down on that one?

25 A. No.

1 Q. Was there anything special that caused you to write down
2 trichloroethylene instead of paint thinner if it was, in
3 fact, paint thinner?

4 A. Just the fact that it had the trichloroethylene in it
5 probably.

6 Q. Okay. What did it look like?

7 A. The can?

8 Q. The can.

9 A. The container, it was yellow and white with black printing
10 on it.

11 Q. And it said Sunnyside Corp.?

12 A. Yes.

13 Q. And it said paint thinner?

14 A. Yes.

15 Q. Did it say trichloroethylene anywhere on the can?

16 A. Yes, it did.

17 Q. Where did it say that?

18 A. In the ingredients.

19 Q. What other ingredients were in it?

20 A. That I don't recall.

21 Q. What makes you recall that it had trichloroethylene in the
22 ingredients?

23 A. The fact that it had that in there.

24 Q. Is there something special that causes you to remember
25 this half-gallon can?

1 A. Yeah. Actually, I bought it one time to clean the outside
2 doors to the building before I painted them.

3 Q. Okay. And I believe in the interrogatory answers they
4 have told us that that occurred about 1996; is that
5 correct?

6 A. I don't really remember. If that's what they say, you
7 know. I don't remember myself.

8 Q. You didn't provide that information then?

9 A. Not that I can recall. I mean, I may have, but I don't
10 remember it.

11 Q. Okay. Well, assuming it was 1996, that was about 15 years
12 ago; and you can remember exactly what the can looked like
13 that you used to paint the garage doors?

14 A. Yeah. It's the same kind of can that Sunnyside still uses
15 for their products. You can still find them in the
16 hardware store.

17 Q. Can you still find yellow and white with black printing
18 paint thinner that contains TCE?

19 A. I don't know if you can find that exact specific product
20 or not, but their cans are just like they used to be.

21 Q. How do you know it was Sunnyside that you used rather than
22 somebody else's product?

23 A. I just remember the name.

24 Q. Did you ever paint anything else during the time that you
25 were employed by Flexsteel?

1 A. Occasionally the carts that I mentioned earlier they used
2 to move the furniture around with.

3 Q. Anything else?

4 A. No.

5 Q. What products did you use when you painted the carts?

6 A. They would have been spray cans of black paint.

7 Q. Where did you get those?

8 A. Hardware store usually.

9 Q. Do you know that for sure, or you're just assuming that's
10 what you did?

11 A. Normally that's where I bought all that type of stuff was
12 from the hardware store.

13 Q. What hardware store, the same one?

14 A. Yeah, same one.

15 Q. Did you use any paint thinner that contained TCE when you
16 occasionally painted the carts?

17 A. No.

18 Q. How do you know?

19 A. Well, normally -- well, not normally -- all the time. I
20 didn't clean the carts. I just, you know, touched them
21 up. They'd have a scratch on them or something. We'd hit
22 them with a little bit of paint to keep them from rusting.

23 Q. What did you use the paint thinner that you've marked on
24 your list as trichloroethylene for when you were painting
25 the outside doors?

1 A. To clean them off, to get all the -- you know, it was the
2 exterior of the door that was splattered with rain and mud
3 and grease from oil in the hinges and stuff, whatnot.

4 Q. Did you take a rag and dip it in the paint thinner and
5 then wipe it on the doors?

6 A. Yes.

7 Q. Were the doors wooden or metal?

8 A. Metal.

9 Q. In your documents, the ones we're talking about near the
10 -- toward the back, there's a photograph it looks like of
11 a Sunnyside Web site picture. It says, "General purpose
12 thinners and solvents." Do you see that?

13 A. Yeah.

14 Q. Is that what the product that you purchased looked like,
15 one of those cans?

16 A. The thinners and solvents, yes.

17 Q. And it said paint thinner on it, like the one second from
18 the left?

19 A. I don't remember if it said just paint thinner or if it
20 was odorless. But it did have paint thinner on it, yes.

21 Q. It said either paint thinner or it said odorless paint
22 thinner, correct?

23 A. Yes.

24 Q. And it looked just like that jug there second from the
25 left in this document, in the documents that you've

1 produced to us today?

2 A. No, actually it looked more like the middle one.

3 Q. So it was a metal can?

4 A. Yeah. It was a metal can; it wasn't plastic.

5 Q. And it was a half-gallon?

6 A. Yes.

7 Q. Where did you get this particular document?

8 A. I didn't.

9 Q. How did it come to be in your possession?

10 A. Which picture are you looking at now? There's more than
11 one.

12 Q. The one with the pictures of the general purpose thinners
13 and solvents.

14 A. Yeah, this document Kelly probably got here.

15 Q. Okay. Did you talk to Kelly about that document?

16 A. Yes.

17 Q. What did you talk about with respect to that document?

18 A. She told me that she found it online and found a copy of
19 the MSDS for it.

20 Q. Did she say anything else to you about it?

21 A. No.

22 Q. She found a copy of the MSDS sheet for it?

23 A. Yes.

24 Q. Where -- is the MSDS for it the one that's --

25 A. Right behind it there.

1 Q. So these aren't Bates numbered, so let's be careful here.
2 So we're in the middle stack in the documents you produced
3 today, which we've marked as Plaintiffs' Exhibit 27. And
4 there's a picture of a Web site that says, "Sunnyside."
5 And it says, "General Purpose Thinners and Solvents." And
6 then the next page says, "Sunnyside," and it says, "Where
7 to buy retail," and it's got a list of hardware stores.
8 Do you see that?

9 A. Yes.

10 Q. And then the next page contains a Material Safety Data
11 Sheet. Is that the one you were talking about?

12 A. Yes.

13 Q. And you believe this particular Material Safety Data Sheet
14 in Plaintiffs' Exhibit 27 is the MSDS sheet for the paint
15 thinner that you used at the Flexsteel site?

16 A. Yes.

17 Q. And if you look at the name it says, "Trichloroethylene,"
18 correct?

19 A. Yes.

20 Q. It doesn't say paint thinner anywhere on this MSDS sheet,
21 does it?

22 A. No, it doesn't.

23 Q. Okay. Now, when I asked you how you made your handwritten
24 list, you said you went to the MSDS binders and you wrote
25 down the product name from the MSDS binders, correct?

1 A. Yes.

2 Q. Okay. So if that were true, wouldn't you have written
3 down -- strike that.

4 So you wrote down the trichloroethylene from the MSDS
5 binders?

6 A. Yes.

7 Q. And then you wrote down Sunnyside Corporation because that
8 was the manufacturer?

9 A. Yeah.

10 Q. And then the health, fire and reactivity code was 2-1-0,
11 correct?

12 A. Yes.

13 Q. Have you looked at any MSDS sheets for paint thinners that
14 Sunnyside Corporation provides?

15 A. No.

16 Q. Do you know if Sunnyside Corporation has ever made a paint
17 thinner that contains trichloroethylene?

18 A. No.

19 Q. Have you talked to anybody at Sunnyside Corporation to
20 determine whether or not in fact it would have been
21 possible for you to have bought a product labeled paint
22 thinner that contained trichloroethylene?

23 A. No.

24 Q. Isn't it possible, Mr. Alexander, that you could be
25 mistaken concerning whether or not the entry

1 trichloroethylene on the inventory list was referring to
2 paint thinner?

3 A. Yes.

4 Q. All right. There's one more document in this stack you
5 produced to us, and it's got some names, handwritten
6 names.

7 A. Yes.

8 Q. Can you tell me what that document is?

9 A. A list of employees.

10 Q. And why is that contained within this list?

11 A. Pardon?

12 Q. Why is this list of employees contained within the
13 documents you produced?

14 A. It would have been from a training session for one of the
15 OSHA standards.

16 Q. And what are the numbers? What do those signify next to
17 the right of the names?

18 A. At the time -- I couldn't swear to it, but I think it was
19 for groupings for when they were going to take their
20 class.

21 Q. So you would do -- well, for instance, is that Tim Wade?

22 A. Yes.

23 Q. That's 4?

24 A. Yes.

25 Q. And that would be like the fourth group that was going to

1 get the OSHA training?

2 A. Yes.

3 Q. And 0 would be, what, the first one of the day, or what
4 would that mean?

5 A. I'm not really sure what 0 meant. Actually, can we change
6 that?

7 Q. Sure.

8 A. I'm going to say that was probably the number of questions
9 they missed on their test.

10 Q. So Tim Wade missed four questions would be your best guess
11 as to what that means?

12 A. Yes.

13 Q. Okay. I want to go back to Plaintiffs' Exhibit 16 and ask
14 you some more questions about the Hazard Communication
15 Program that you testified you created.

16 And you testified that you wrote this document?

17 A. Yes.

18 Q. On page 1 in the introduction, paragraph (a) says,
19 "Regulatory requirement." Do you see that?

20 A. Yes.

21 Q. And it says, "Employers shall develop and implement a
22 written Hazard Communication Program for their workplaces,
23 which shall at least describe how labeling and other forms
24 of warning, Material Safety Data Sheets, and employee
25 information and training will be met in compliance with

1 OSHA standards as set forth in 29 CFR 1910.1200." Do you
2 see that?

3 A. Yes.

4 Q. Have you read 29 CFR 1910.1200?

5 A. Yes.

6 Q. And did you quote that from this regulation?

7 A. Yes.

8 Q. When did you read 29 CFR 1910.1200?

9 A. I couldn't tell you the exact date I read it the first
10 time, or the last time even.

11 Q. Where did you read it?

12 A. Where? The first time was probably at work.

13 Q. Flexsteel had a copy of the code of federal regulations?

14 A. No. The first time would have been Midway Truck & Coach.

15 Q. Did Midway have a copy of the CFR reports?

16 A. Yes.

17 Q. The entire volume set?

18 A. Yes.

19 Q. And then did you get a copy of that when you -- did you
20 take a copy of that to Flexsteel with you?

21 MR. DEVETSKI: I'm going to object. That
22 mischaracterizes his prior testimony as far as his
23 employment record is concerned.

24 BY MR. MICHAEL:

25 Q. Fair enough. Let me rephrase.

1 When you left Midway and went to work for Dygert
2 Seating, did you take a copy of the CFRs with you?

3 A. No, I did not take a copy.

4 Q. Did you have them memorized?

5 A. No. I bought a copy of my own.

6 Q. And where did you keep that copy?

7 A. At home.

8 Q. Do you still have it?

9 A. No.

10 Q. Why didn't you take it to work with you?

11 A. I didn't want to leave it there.

12 Q. So in 1992 when you were hired by Dygert Seating -- well,
13 let me ask -- strike that.

14 Were you asked in 1992 to create a Hazard
15 Communication Program for Dygert Seating?

16 A. No.

17 Q. You took it upon yourself to do that?

18 A. They -- basically, yes. They did not have one. I told
19 Dave that I was familiar with it and that I could do it
20 for him, and he told me to go ahead and proceed.

21 Q. Okay. And then you purchased a set of the CFR for
22 yourself?

23 A. Yes.

24 Q. Did you get reimbursed for that?

25 A. No.

1 Q. How much did it cost?

2 A. At that time, it was -- if I remember correctly, it was
3 like 69, 70 dollars.

4 Q. Okay. And then did you write this particular program at
5 your home or at work?

6 A. At home.

7 Q. Did you get paid extra for doing that?

8 A. No, sir.

9 Q. Did you get any bonus or anything like that for doing it?

10 A. No, sir.

11 Q. Did you get a raise?

12 A. No.

13 Q. In paragraph (a) it says, "A list of all hazardous
14 materials known to be present in the workplace." Do you
15 see that?

16 A. Yes.

17 Q. And is it your testimony that twice a year you would walk
18 through the facilities on Cooper Drive and Marina Drive
19 and identify the hazardous materials that were in the
20 workplace?

21 A. Yes.

22 Q. And you would start with the MSDS binder?

23 A. Yes.

24 Q. And then walk through to see what was actually in place?

25 A. Yes.

1 Q. What happened if you found -- if you wrote down an entry
2 for something that was in the MSDS binder and then you
3 couldn't find it anywhere in either of the manufacturing
4 plants?

5 A. Basically nothing. We still left it on the list and left
6 the MSDS in the book because the product had been there.

7 Q. You never marked a line through it?

8 A. No.

9 Q. I've asked you about the X's on your inventory list. And
10 you don't believe that that means that those products were
11 no longer in use?

12 A. That's correct.

13 Q. Do you have any possible explanation for what those X's
14 could be?

15 A. No.

16 Q. Do you know when the frame shop was closed?

17 A. Specific time, no.

18 Q. Is it possible that if the frame shop had been closed
19 prior to the time that you took the particular list that
20 we have marked as Plaintiffs' Exhibit 21 through the
21 facilities that you could have X'd out acetylene, argon,
22 argon, carbon dioxide because those were things that had
23 been produced in the frame shop that were no longer in
24 use?

25 A. No.

1 Q. Did you continue to use acetylene after the frame shop was
2 closed?

3 A. No.

4 Q. Did you continue to use argon after the frame shop was
5 closed?

6 A. Argon, yes.

7 Q. How did you use argon after the frame shop was closed?

8 A. I had a welder in the maintenance area that I used.

9 Q. When did you stop using 30107 contact adhesive?

10 A. I really couldn't give you a date.

11 Q. Do you have an approximation?

12 A. No.

13 Q. When you stopped using 30107 contact adhesive, was it
14 replaced with the Chem-Tech number 7777 premium adhesive?

15 A. Yes.

16 Q. Is it possible that the reason you put an X next to the
17 30107 contact adhesive in your handwritten list is because
18 you could stop using the 30107 contact adhesive and
19 started using the 7777 premium adhesive that's notated
20 there at the very bottom of the third page of Plaintiffs'
21 Exhibit 21?

22 A. No.

23 Q. Why not?

24 A. We didn't actually necessarily ever stop totally using one
25 adhesive or the other. We used what was prevalently

1 available at the time. Sometimes they would have one;
2 sometimes they would have the other one.

3 Q. Okay. So you'd use whatever was cheapest and you'd float
4 back and forth between the --

5 A. Not necessarily cheapest. It was what was available.

6 Q. What was available that fit with your product usages?

7 A. Yes.

8 Q. Is that fair to say?

9 A. Uh-huh.

10 Q. So you'd use an adhesive for a while and then you might
11 stop using it because another one became available and
12 worked with your products, but then you might go back to
13 the original one, correct?

14 A. Yeah. Depending on what they had in stock, yes.

15 Q. And you used a lot of different adhesives because you made
16 a lot of different products, correct?

17 A. Basically two different adhesives, but yeah.

18 Q. Well, if we look at your hazardous materials list at the
19 very end of Exhibit 16, there's an adhesive 30141-NFT,
20 Chem-Tech, correct?

21 I'm in Plaintiffs' Exhibit 16 in the Hazard
22 Communication Program. There's a master list of hazardous
23 materials.

24 A. At the very end of that one.

25 Q. And I suppose I should go back and lay a foundation. I

1 was basing my question off of Kelly's e-mail. But is it
2 fair to say that this master list of hazardous materials
3 at the very end of Plaintiffs' Exhibit 16 is a master list
4 of hazardous materials that you prepared?

5 A. Yes.

6 Q. Why is this one typewritten and the other one is
7 handwritten?

8 A. This one would have been a copy from what was in the MSDS
9 book at one time or another. I don't know when. But it
10 would have been one that was in there. And this is one
11 that I would have written off of one of those lists.

12 Q. Okay. So somebody sat down and typed up the information
13 for the MSDS sheets into a nice little chart like the last
14 three pages on Plaintiffs' Exhibit 16?

15 A. Yes. It would have been one of the times I was trying to
16 organize things a little bit better. I went from one time
17 doing things alphabetical to the next time trying to do it
18 by manufacturer.

19 Q. Do you know the date of this particular list?

20 A. No, I don't.

21 Q. You notice -- let's go down toward the bottom. There's an
22 entry for 1620 anti-spatter on the first page --

23 A. Yes.

24 Q. -- of the master list. Do you see that?

25 A. Uh-huh.

1 Q. Is there any anti-spatter product identified in the
2 handwritten list that you produced?

3 A. I do not see one.

4 Q. And would it be fair to say that at the time the list was
5 generated, that we've marked as Plaintiffs' Exhibit 21,
6 Flexsteel did not have anti-spatter products on the
7 premises and, therefore, you didn't write it in your list?

8 A. I would say no.

9 Q. And why is that?

10 A. Because I always had it for my welder.

11 Q. All right. So then it's fair to say that the list that
12 we've marked as Plaintiffs' Exhibit 21 is just not a
13 complete list of the hazardous materials?

14 A. It's fair to say I may have missed it, yes, when I wrote
15 it down.

16 Q. Okay. And it's fair to say that if you missed the
17 anti-spatter, you may have missed some other chemicals too
18 as well?

19 A. Yes.

20 Q. And the same would be true for the master list of
21 hazardous materials at the back of the Hazard
22 Communication Program that we've marked as Plaintiffs'
23 Exhibit 16, correct?

24 A. Yes.

25 Q. All right. Back to the first page of the Hazard

1 Communication Program for Dygert Seating, Inc., paragraph
2 (b), it says, "The method the employer will use to inform
3 employees of the hazards associated with the materials
4 used in the workplace." Do you see that?

5 A. Yes.

6 Q. What method did you use to inform employees of the hazards
7 associated with the materials used in the workplace?

8 A. The training that was done for them.

9 Q. The annual OSHA training?

10 A. Yes.

11 Q. Anything else?

12 A. That was all.

13 Q. And you provided the annual OSHA training, correct?

14 A. Yes.

15 Q. To your knowledge, was there any other person from 1992 to
16 2007 who provided employees with information concerning
17 hazards associated with the materials used in the
18 workplace at the Cooper Drive or Marina Drive facility?

19 A. No.

20 Q. And then in paragraph (c) it says, "The method the
21 employer will use to inform outside contractor personnel
22 of the hazardous materials to which they may be exposed
23 while on company property and the necessary safety
24 precautions to be taken for their protection." Do you see
25 that?

1 A. Yes.

2 Q. And how did you accomplish that goal?

3 A. How did I?

4 Q. Yes.

5 A. I told the outside contractor when they came in where the
6 MSDS book was. If he was going to be working in a
7 particular area, that I knew contained something that
8 could be harmful, I let him know it was there.

9 Q. Was there anybody else between 1992 and 2007 who was
10 responsible for informing outside contractor personnel of
11 the hazardous materials to which they may be used while on
12 company property and necessary safety precautions to be
13 taken for their protection?

14 A. No.

15 Q. It was you?

16 A. Yes.

17 Q. Now, you told every outside contractor who came on the
18 premises where the MSDS binder was?

19 A. If I was there when they came in, yes.

20 Q. Did you work 40 hours a week?

21 A. Yes.

22 Q. Did you have pretty good attendance?

23 A. Yes.

24 Q. And the manufacturing facility operated on eight-hour
25 days, right?

1 A. Production, yes. Yes.

2 Q. So you were there pretty much from open and close,
3 correct?

4 A. During production hours, yes.

5 Q. So it's fair to say that the majority of time that an
6 outside contractor may have come on to the premises, you
7 would have been there?

8 A. Unless it was somebody that was like computer or telephone
9 that came in late, yes, I was there.

10 Q. Okay. And it's your testimony that you informed every
11 single one of those outside contractors where the MSDS
12 binders were located?

13 A. Yes.

14 MR. DEVETSKI: I'm going to object because it
15 mischaracterizes his prior testimony. You can
16 answer.

17 A. Yes.

18 BY MR. MICHAEL:

19 Q. That's your testimony?

20 A. Yes.

21 Q. Okay. If we go to page 2 at the top, paragraph 3, it
22 says, "This program, along with a training videotape,
23 shall be the primary means of communicating information
24 regarding hazardous materials to our associates and
25 others." Do you see that?

1 A. Yes.

2 Q. What was the training tape that was used?

3 A. It was a commercial training tape.

4 Q. And what was on it?

5 A. It gave instruction on how to read an MSDS sheet, on how
6 to get help understanding what was on it, how to handle
7 various chemicals.

8 Q. Who produced it?

9 A. Right off the top of my head, I couldn't tell you.

10 Q. How long was it?

11 A. It was like half an hour.

12 Q. Was it a VHS tape?

13 A. Yes.

14 Q. Do you still have a copy of it?

15 A. I don't think so.

16 Q. Where was it kept at Flexsteel?

17 A. In my office.

18 Q. Do you know what happened to it when Heritage sold the
19 company?

20 A. Not really. I probably threw it away.

21 Q. How many years did you use the same tape?

22 A. I really couldn't tell you. I know when I got it, I made
23 a couple copies of it; but I couldn't tell you how long I
24 used the same tape.

25 Q. When did you get it?

1 A. I think probably '93, '94.

2 Q. When you wrote the Hazard Communication Program in 1992
3 that we've marked as Plaintiffs' Exhibit 16, did you have
4 a copy of the tape?

5 A. I had a copy that I was borrowing from Midway Truck &
6 Coach.

7 Q. So you were borrowing Midway's copy when you --

8 A. Yes.

9 Q. And then a couple years later roughly, you bought your own
10 copy?

11 A. Dygert bought it, yeah.

12 Q. Did Dygert pay for the videotape?

13 A. Yes, they did.

14 Q. Did you ever ask Mr. Dygert why he would pay for the
15 videotape but not the CFR?

16 A. No.

17 Q. Did you ever ask him to pay for the CFR?

18 A. No.

19 Q. If you turn to page 3, at the bottom there's some
20 handwriting. Do you see that?

21 A. Yes.

22 Q. Is that your handwriting?

23 A. It looks like it.

24 Q. And what did you write?

25 A. "Revise all reference to chemical to read materials."

1 Q. Why did you write that?

2 A. To try to avoid people assuming or thinking or referring
3 to a chemical as only a liquid.

4 Q. Why was it important to try to avoid people referring to
5 chemicals as only a liquid?

6 A. Because there are certain powdered things that they could
7 run across that could be just as harmful to them as a
8 liquid.

9 Q. It's fair to say there are solid agents that can be just
10 as harmful as liquid agents?

11 A. Yes.

12 Q. And that's the message you were trying to convey?

13 A. Yes.

14 Q. Now, on that same page in paragraph (b), "Statement of
15 Company Policy," it says, "It shall be the policy of
16 Dygert Seating, Inc., to identify and mark the locations
17 where hazardous materials are used, stored or
18 transported." Do you see that?

19 A. Yes.

20 Q. Did you do that?

21 A. As far as stored, yes, transported, no.

22 Q. And why did you not mark the locations where hazardous
23 materials were transported?

24 A. We didn't really transport them. I mean --

25 Q. What about how did you identify where they had been

1 stored?

2 A. We had these yellow flameproof, fireproof, flammable
3 storage containers that we kept all that stuff in.

4 Q. How many of those did you have?

5 A. There was like four or five of them in the main plant and
6 one or two in the Cooper Street building.

7 Q. I'll hand you a document we're going to mark as
8 Plaintiffs' Exhibit 30 and ask you to take a look at it,
9 please.

10 (Plaintiffs' Exhibit 30 marked for
11 identification.)

12 Q. Do you have Plaintiffs' Exhibit 30 in front of you?

13 A. Yes.

14 Q. And you recognize it to be an aerial photograph of the
15 main plant and the frame shop?

16 A. Yes.

17 Q. And what I'd like you to do -- I'm going to ask Angela to
18 hand you a red pen. And could you just mark on the main
19 plant the general location where the four or five
20 flammable storage containers were located.

21 A. (Complying.)

22 Q. Have you marked those spots?

23 A. Yes.

24 Q. I'm just going to stand up and take a look, if that's
25 okay. And we will all get color copies of this afterwards

1 so it will be easier for us to do this. But just to make
2 a record, you've marked "1" on the northwest portion of
3 the building up by where the flame laminator is; is that
4 correct?

5 A. Well, yeah. At one time the flame laminator, it was more
6 centered. But it's in that general area, yes.

7 Q. Pretty close. And would those be the materials that were
8 used in connection with the flame lamination process?

9 A. Yes.

10 Q. And what would have been in that particular flammable
11 cabinet?

12 A. At that time, it could have been various cleaning
13 products. We also had an assembly operation and sewing
14 back in that area.

15 Q. Could it have been cleaning products for the fabrics and
16 materials?

17 A. Yes.

18 Q. How many cleaning products did you have for your fabrics
19 and materials?

20 A. Maybe half a dozen.

21 Q. You had a different one for each type of fabric; is that
22 fair to say?

23 A. Not necessarily each type of fabric. It was for different
24 things that they were trying to clean off, the fabric or
25 vinyl.

1 Q. Thank you. I'm going to copy these down so I don't have
2 to stand up.

3 Who was in charge of cleaning the fabric when it got
4 dirty?

5 A. Whoever was working on it at the time.

6 Q. A cutter?

7 A. It could have been the cutting department, sewing
8 department, installation department, shipping.

9 Q. Just anybody --

10 A. Whoever noticed it was dirty, yeah.

11 Q. Okay. Where would they go to get the cleaning agents if
12 they had to clean the fabric?

13 A. The nearest place to their department.

14 Q. The nearest flammable cabinet to their department?

15 A. Yes.

16 Q. Do you know if -- were those anti-spotting agents that
17 would have been used then?

18 A. Some of them, yes.

19 Q. Do you know as we sit here today the ingredients in those
20 particular anti-spotting agents?

21 A. Not right off the top of my head.

22 Q. You'd have to see the MSDS sheet, correct?

23 A. Yeah, because it ranged anywhere from Windex to, you know,
24 the Bender fabric spot remover product we had called
25 Simple Green. It was a variety of different things.

1 Q. To your knowledge, did any of them have chlorinated
2 compounds in them?

3 A. Not that I recall they didn't.

4 Q. Can you say that for sure without seeing the MSDS sheets?

5 A. Not without seeing the sheet, no.

6 Q. Okay. And you don't have any of those sheets, correct?

7 A. No.

8 Q. That's a correct statement, right?

9 A. Yeah, that's correct.

10 Q. Okay. Back to the flammable storage areas then. I talked
11 to you about the one on the northwest corner over by where
12 the flame laminator used to be. And then there's another
13 one down there. It would be about midway down on that
14 part of the building on the east part by a loading dock.
15 What would have been in that particular area?

16 A. The shipping department.

17 Q. And what sort of chemicals would have been in the
18 flammable cabinet by the shipping department?

19 A. A variety of the same cleaning supplies, also motor oil,
20 antifreeze for the truck, windshield washer solvent, the
21 diesel fuel additive.

22 Q. Is it fair to say you had anti-spotting agents in each of
23 the flammable cabinets located in the main plant?

24 A. Yes, I would say so.

25 Q. And then down on the north part of the bottom part of the

1 main plant there, over towards the east, you've drawn two
2 little boxes.

3 A. Uh-huh.

4 Q. What was that portion of the facility used for?

5 A. Okay. One -- the one on the right-hand side --

6 Q. The east? Right-hand side --

7 A. Yes, the east side. That would have been what they called
8 the cage where they kept supplies under lock and key.

9 Q. Okay. And why did they keep supplies under lock and key
10 in that particular area?

11 A. They had various things that tended to walk off a lot of
12 times, seat vibrators, seat heaters, stuff like that that
13 were high dollar items.

14 Q. Were there hazardous chemicals kept in that container as
15 well?

16 A. That would have been the location where the bulk of the
17 cleaners and stuff would have been kept.

18 Q. Under lock and key?

19 A. Yes.

20 Q. Okay. Did you have a key to that?

21 A. No, I did not.

22 Q. Who had the key to the cage?

23 A. Jeff Mobley.

24 Q. Is he the only one?

25 A. I really couldn't say. Probably not, but I couldn't swear

1 to it.

2 Q. But if you needed a particular degreaser that was being
3 kept in the cage, you would go to Mr. Mobley to get the
4 key?

5 A. Yes.

6 Q. Was there any decision made to put certain chemicals in
7 the cage versus in the flammable cabinets that were open
8 to everybody?

9 A. Just the fact that they were basically a bulk item there.
10 When a case would come in, a case of spray cans or
11 whatever, it would go there. And then it would be
12 distributed out just to kind of try to keep track of it.

13 Q. Okay. I think I understand. So is it fair to say the
14 cage was sort of a staging area?

15 A. Yes.

16 Q. So you'd purchase a particular item in bulk by the case.
17 And then you'd put the case of cans in the cage until it
18 was time to put the individual cans out on the floor?

19 A. Yes.

20 Q. Fair to say?

21 A. Yes.

22 Q. And it would work that way for degreasers?

23 A. Yes.

24 Q. And it would work that way for anti-spotting agents?

25 A. Yes.

1 Q. And it would work that way for -- or did it work that
2 way --

3 Well, for instance, the Bender 604 adhesive, did that
4 go to the cage first?

5 A. Yes.

6 Q. So it came in in bulk cases?

7 A. Yes.

8 Q. To the west of the cage, there's another flammable cabinet
9 you've made a notation for. What was in that one?

10 A. That would have been my maintenance area.

11 Q. So that would have been your stuff?

12 A. Yes.

13 Q. And what sort of things did you keep in your flammable
14 cabinet?

15 A. Same thing as the rest of them, with the addition of
16 experimental glue.

17 Q. Experimental what?

18 A. Glues.

19 Q. Experimental glues. Why did you keep experimental glues
20 in your cabinet?

21 A. When we tried a different glue, we would look for a glue
22 that would work as well as what we were using that was
23 less toxic. We were searching basically for a water-based
24 glue, which we never did find one that worked with
25 anything.

1 But we would get a sample in. It was usually a
2 gallon jug and we would try it. And if they didn't
3 perform well enough, I stored them in there just to keep
4 them away from everybody else.

5 Q. What did you do with them once your cabinet filled up?

6 A. Eventually poured them out.

7 Q. Where did you pour them?

8 A. On cardboard.

9 Q. And then what did you do with the cardboard?

10 A. Let it dry and threw it away.

11 Q. Just in the general trash?

12 A. Yes.

13 Q. So it went into the compactor and then to the roll-off --

14 A. Yes.

15 Q. And then Himco took it away.

16 Where was the engineering plant where they were doing
17 the prototyping, using the Bender 604 flexible foam?

18 A. At one time they were up here where the one is by itself
19 in the corner right behind the offices.

20 Q. Okay. And you're pointing to the --

21 A. It would be the southeast.

22 Q. The southeast corner. Can you put a red X right there so
23 that when we go back and look at this diagram, we'll know
24 that's where the engineering part place was.

25 A. (Complying.)

1 Q. Okay. And then you said at one time. So then did they
2 later move it?

3 A. Yeah. They moved it upstairs, just about in the same
4 general area.

5 Q. Okay. And then I think, actually, that's the last cabinet
6 I haven't asked you about was right there where the
7 engineering plant had formerly been located. What would
8 have been stored in that flammable cabinet?

9 A. The same products as in the other ones, with the addition
10 of that solvent-based ink. They also had that in that
11 cabinet.

12 Q. And why did they have that over there?

13 A. The ink?

14 Q. Yeah.

15 A. That was the one they used in that big pattern making
16 machine.

17 Q. And that was done in engineering?

18 A. Yes.

19 MR. MICHAEL: We got two minutes. Let's just
20 stop real quick and change our tape.

21 VIDEOGRAPHER: Off the record at 2:07.

22 (Pause in proceedings.)

23 VIDEOGRAPHER: Back on the record at 2:15.

24 Please continue.

25

1 BY MR. MICHAEL:

2 Q. Before we took our break, we were talking about
3 Plaintiffs' Exhibit 30. Can you show me -- first off,
4 could you circle the loading dock on the frame shop in the
5 main facility that we talked about earlier, just so we
6 know where they are.

7 A. On the main facility?

8 Q. Well, the one that you excavated out of the main facility
9 because the drain had been clogged.

10 A. Okay. I don't remember which one it was. (Complying.)
11 Okay.

12 Q. Okay. And you put a circle around it. Now you said, "I'm
13 trying to remember which one it was." Did all of the
14 loading docks have the same sort of gravel drain at the
15 base?

16 A. Yes.

17 Q. And then will you show me where -- can you circle where
18 the loading dock was on the frame shop as well?

19 A. (Complying.)

20 Q. Thank you. And then you had mentioned that there was --
21 there were also one or two flammable containers in the
22 frame shop. Can you do a little red rectangle on the
23 frame shop to show us where those were located?

24 A. (Complying.)

25 Q. Okay. So you've got both of them on the south portion of

1 the building?

2 A. Yes.

3 Q. Right next to each other?

4 A. Yes.

5 Q. And what would have been stored in those flammable
6 cabinets?

7 A. Over there they kept the anti-spatter stuff in there.
8 They would have kept spray paint in them.

9 Q. Did they ever keep degreaser in the welding shop?

10 A. Yeah, I think they had LPS degreaser early, yeah. Yes.

11 Q. And that would be the LPS degreaser that we talked about
12 earlier today?

13 A. Yes.

14 Q. Okay. Back to Plaintiffs' Exhibit 16, the Hazard
15 Communication Program. On page 6, paragraph (b),
16 Statement of Company Policy, number 1 says, "It shall be
17 the policy of Dygert Seating, Inc., to provide accurate,
18 up-to-date Material Safety Data Sheets for all hazardous
19 materials obtained and to review and update these MSDS no
20 less than monthly." Do you see that?

21 A. Yes.

22 Q. Now, in fact, you did it biannually, correct?

23 A. Yes.

24 Q. So you didn't quite meet that portion of this program;
25 fair to say?

1 A. Yes.

2 Q. Okay. If you flip back to page 9, it says, "Personnel
3 Responsibilities Under This Program." Do you see that?

4 A. Yes.

5 Q. And then there's a plant manager and it lists several
6 responsibilities. You got it in front of you?

7 A. Yes.

8 Q. It says, "A plant manager," and it lists several
9 responsibilities. Who was that referring to?

10 A. At one time it would have been Greg Lucchese and then
11 Charlie Mabie after him.

12 Q. And did Mr. Lucchese and Mr. Mabie actually do the things
13 identified there, or did you actually do that work?

14 A. I did that.

15 Q. And then if you go to page 10, the very bottom section
16 there it says, "Safety Director Responsibilities."

17 A. Yes.

18 Q. And there are certain responsibilities there. Is that
19 referring to you as the safety director?

20 A. Basically, yes.

21 Q. Okay. Now, you say "basically." Was there somebody else
22 who would have done that?

23 A. No.

24 Q. It's fair to say you were the guy responsible for this
25 program, right?

1 A. Yes.

2 Q. You wrote it and you implemented it, correct?

3 A. Yes.

4 Q. Now, if you keep going back, page 14, there's a Material
5 Safety Data Sheet request form.

6 A. Yes.

7 Q. Did you ever get one of those?

8 A. Yes.

9 Q. How many times did you get an MSDS request?

10 A. Half a dozen.

11 Q. Do you remember what products MSDS sheets were requested
12 for?

13 A. Geez, no, I don't.

14 Q. Do you remember what circumstances led to someone
15 requesting an MSDS sheet from you?

16 A. No.

17 Q. Were there ever any instances of OSHA violations during
18 the time that you were responsible for the OSHA program?

19 A. On hazardous materials, no violations that I can recall.
20 We had OSHA in a couple times to test.

21 Q. And were there violations as a result of the tests?

22 A. No.

23 Q. Okay. What kind of tests did they do?

24 A. Air quality.

25 Q. And where did they test?

1 A. In and around the gluing areas.

2 Q. To see what the level of VOCs was that the workers were
3 being exposed to?

4 A. Yes.

5 Q. Okay. And the couple times they tested, they did not find
6 any levels that exceeded the permissible exposure levels;
7 fair to say?

8 A. That's correct.

9 Q. Did they do any other kind of testing?

10 A. They did noise testing once.

11 Q. Anything else?

12 A. That's it.

13 Q. And then you said as far as hazardous materials, no
14 violations. What did you mean by that?

15 A. We had some OSHA violations a couple different times on
16 some of the press equipment.

17 Q. What kind of violations were those?

18 A. Guards had been moved or altered to where they weren't
19 quite legal.

20 Q. Did you ever have an OSHA violation for failing to keep an
21 accurate list of your hazardous materials on site?

22 A. Not that I'm aware of, no.

23 Q. Would it surprise you if you had?

24 A. Actually, yes, it would.

25 Q. You would have known about it though, wouldn't you?

1 A. I would think so.

2 Q. Is there anybody else at the facility who ever
3 communicated with OSHA inspectors other than you?

4 A. Yes.

5 Q. And who would that have been?

6 A. Gregg Gaskill and Greg Lucchese.

7 Q. Is it possible that if Dygert or Flexsteel had been cited
8 by OSHA for failing to keep an accurate list of hazardous
9 materials on site, that either Mr. Gaskill or Mr. Lucchese
10 might have been notified of the citation and just not told
11 you about it?

12 A. Yes.

13 Q. Did you ever have a worker who was injured as a result of
14 exposure to any hazardous chemicals that then filed a
15 complaint with OSHA?

16 A. That was injured? Not that I know of, no.

17 Q. Okay. Now why did you qualify it like that? You set
18 up and --

19 A. We did have a couple, a man and his wife that did complain
20 about the glue fumes, that they were too strong.

21 Q. And is that what led OSHA to come in and do the air
22 sampling?

23 A. Yes. I think we called them in.

24 Q. Did the man and his wife work in the glue booth?

25 A. Yes.

1 Q. Did you transfer them to a different spot after that?

2 A. No.

3 Q. They just learned to live with it?

4 A. They left shortly after that.

5 Q. Okay. On page 18 of your Hazard Communication Program in
6 the glossary it says, "Responsible Party. Someone who can
7 provide additional information on the hazardous material
8 and appropriate emergency procedures, if necessary." Do
9 you see that?

10 A. Yes.

11 Q. Was that referring to you?

12 A. Yes.

13 Q. Let's wait for Mr. Devetski to answer the phone.

14 A. Sorry about that.

15 Q. Can I go on?

16 MR. DEVETSKI: Please do. Go ahead.

17 BY MR. MICHAEL:

18 Q. If the fire department had to come out to the facility and
19 locate flammable chemicals, who would they talk to?

20 A. Me.

21 Q. Anybody else?

22 A. I was listed as their primary contact.

23 Q. On page 20, there's a test, a Hazard Communication Program
24 comprehensive test. Do you see that?

25 A. Yes.

1 Q. Is that a test that was provided to new employees?

2 A. Yes.

3 Q. Okay. Did you write that test?

4 A. Yes.

5 Q. Did you copy it out of somewhere, or did you make it up
6 yourself?

7 A. I believe I copied it.

8 Q. As we sit here today, do you know the answers to the
9 questions?

10 A. Pardon?

11 Q. Do you know the answers to the questions?

12 A. I hope so.

13 Q. What is the maximum OSHA permissible exposure level for
14 methylene chloride?

15 A. It's been a number of years, but I would say 50 parts per
16 million.

17 Q. Okay. On page 22, there's an OSHA guideline for hazardous
18 materials evaluation. Do you see that?

19 A. Yes.

20 Q. Did you develop those guidelines, or did you copy those
21 from an OSHA manual somewhere?

22 A. That came from the OSHA manual.

23 Q. Okay. And then on page 23 it says, "The following
24 questions must be evaluated for each substance, material
25 or chemical found to be present in the workplace to

1 determine the necessity of appropriate MSDS information."

2 Do you see that?

3 A. Yes.

4 Q. And then there's a hazard material evaluation data sheet
5 on page 24. Did you ever fill out one of those?

6 A. Yes, actually, I did.

7 Q. And what happened to the hazardous material evaluation
8 data sheets after they were filled out?

9 A. They would have eventually been thrown away.

10 Q. Do you recall specifically ever filling one of those out?

11 A. Yes, I do. I couldn't give you the date or anything. But
12 I know I filled them out on different new products that
13 have come in.

14 Q. Can you give me an example of a product that you would
15 have filled one of those out for?

16 A. Could have been any one of the test adhesives that came
17 in. Mr. Gaskill would normally order the stuff and he
18 never would remember to request an MSDS with it.

19 Q. So then you would go through this to try and determine if
20 it was hazardous?

21 A. Yes.

22 Q. Okay. Now, in (a) it says, "Does the material appear on,"
23 and then it's "OSHA 29CFR 1910.1000 or subpart Z." Do you
24 see that?

25 A. Yes.

1 Q. And you had that reg at your house?

2 A. Yes.

3 Q. And then next it says, "ACGIH List." Do you see that?

4 A. Yes.

5 Q. Did you have a copy of that?

6 A. No.

7 Q. Then how would you determine if the material appeared on
8 it?

9 A. Just between the OSHA list. We did have a partial listing
10 for IARC and the label on the container or whatever it
11 came in.

12 Q. Did you have a copy of the NTP list?

13 A. No, I did not.

14 Q. And then in part (b) it says, "Does the material have any
15 of the following characteristics?" And then, for instance
16 it says, "Flash point at or below 200 degrees Fahrenheit."
17 How would you determine that?

18 A. I couldn't actually determine the flash point. If it was
19 flammable, we went by that basically.

20 Q. Okay. It's fair to say you had no way to determine the
21 flash point of the materials, correct?

22 A. No, not without the MSDS sheet.

23 Q. So that's fair to say, correct?

24 A. Yes.

25 Q. And a little way down it says, "Is it an oxidizing agent

1 or a reducing agent?" Do you see that?

2 A. Yes.

3 Q. How did you determine if it was an oxidizing agent or a
4 reducing agent?

5 A. Basically from whatever the label had on the container.

6 Q. What if the label didn't address that issue?

7 A. Then I would move on to the next step.

8 Q. Because you wouldn't have any way to know?

9 A. No. I just did the best I could with what I had.

10 Q. On page 25 it says, "If one or more of the preceding
11 questions were answered yes, a Material Safety Data Sheet
12 must be on file and labeling prepared per OSHA standard
13 procedure." Do you see that?

14 A. Yes.

15 Q. How did you do the labeling?

16 A. We actually had these little self-adhesive labels that had
17 a place where you could mark the chemical name or the
18 material name that had the little triangle symbol on it.

19 Q. And you would write the information out yourself and stick
20 it on the product?

21 A. Yes.

22 Q. Did you ever do that with any waste containers?

23 A. Yes.

24 Q. How often did you label your waste containers?

25 A. Whenever I got one, which wasn't very often.

1 Q. Can you give me an example of a time that you labeled one
2 of your waste containers with those adhesive stickers?

3 A. A container of waste oil.

4 Q. Now, you would write "waste oil" on it?

5 A. Yes.

6 Q. And what else?

7 A. The flammability and health.

8 Q. How did you determine the flammability and health?

9 A. Based from the MSDS sheet from the new product.

10 Q. You didn't do any of your own determination, correct?

11 A. No, no.

12 Q. That's a correct statement?

13 A. Yes, that's correct.

14 Q. Okay. How often did you have containers of waste oil?

15 A. Twice the entire time I was there maybe.

16 Q. And what happened to those containers?

17 A. They would have been picked up and hauled away.

18 Q. By who?

19 A. I'm not really sure. It would have been a waste hauling
20 service that Mr. Gaskill would have contacted.

21 Q. Do you ever remember seeing a waste hauling service at the
22 facility, either Cooper Drive or Marina Drive?

23 A. I think one time I saw a company truck there that said
24 Berrath on it.

25 Q. But you can't be sure?

1 A. I'm not real sure what they were doing at the time. But I
2 do remember a truck coming out and they put a hose in a
3 barrel of waste oil and pumped it out.

4 Q. All right. So a company called Berrath pumped waste oil
5 out of a drum?

6 A. Well, I don't know. It wasn't Berrath. I saw their truck
7 there once. It said something about Berrath Waste. But
8 the one that was pumping it out of the barrel was a
9 different company.

10 Q. So these are two different occasions that you're
11 describing --

12 A. Yes.

13 Q. -- for me?

14 A. Yes.

15 Q. Okay. On the occasion where you think you saw the Berrath
16 company truck, what do you remember about that?

17 A. Not much of anything really, other than the truck said
18 Berrath on it.

19 Q. But you don't know what they were doing?

20 A. No, I don't.

21 Q. Do you know when that was?

22 A. No, sir.

23 Q. Okay. On page 26 of Exhibit 16 there's Associate's
24 Acknowledgment of Training form. Do you see that?

25 A. Yes.

1 Q. Is that something that the associate would fill out when
2 you give them the training, and it would go into their
3 personnel file then?

4 A. Yes.

5 Q. And then on page 27 there's a Dygert Seating, Inc.,
6 Associate Exposure Report. Do you see that?

7 A. Yes.

8 Q. Did you ever have to fill one of those out?

9 A. No, I did not.

10 Q. Now, when Flexsteel purchased the assets of Dygert
11 Seating, you were already the one responsible for
12 administering the Hazard Communication Program, right?

13 A. Yes.

14 Q. And for complying with OSHA?

15 A. Yes.

16 Q. Did anybody from Flexsteel ever talk to you prior to
17 purchasing the assets about Dygert Seating's policies with
18 respect to OSHA or environmental regulations?

19 A. No.

20 Q. Would you look at Plaintiffs' Exhibit 15, please?

21 A. 15?

22 Q. Yeah, it should be right in front of the one you got.

23 A. Blank, nothing there.

24 Q. There's no 15?

25 A. No.

1 MR. MICHAEL: All right. Let's go off the record
2 for just a second.

3 VIDEOGRAPHER: Off the record at 2:37.

4 (Recess taken.)

5 VIDEOGRAPHER: Back on the record at 2:52.

6 Please continue.

7 BY MR. MICHAEL:

8 Q. Mr. Alexander, I'm going to hand you a document that we're
9 going to mark as Plaintiffs' Exhibit 31. I'd like you to
10 please take a look at it.

11 (Plaintiffs' Exhibit 31 marked for
12 identification.)

13 Q. Do you have 31 in front of you?

14 A. Yes.

15 Q. Have you seen Plaintiffs' Exhibit 31 before?

16 A. No.

17 Q. Well, you can see on the title it's captioned "Amended
18 Responses of Defendant Flexsteel Industries, Inc., to
19 Plaintiffs' First Set of Interrogatories." Do you see
20 that, at the very top?

21 A. Yes.

22 Q. Okay. And specifically, I want to ask you about
23 Interrogatory 25, which says, "Are you aware of any use of
24 trichloroethylene ('TCE'), or any material containing TCE,
25 at the facilities between 1983 to present? If so,

1 describe all such uses." Do you see that?

2 A. Yes.

3 Q. And then if you turn the next page in paragraph 1, it
4 says, "An aerosol spray that reportedly contained some TCE
5 was purchased in 16-ounce aerosol spray cans was used to
6 periodically clean the cutters. I am advised that this
7 maintenance product would quickly evaporate upon being
8 sprayed." Do you see that?

9 A. Yes.

10 Q. Do you know what that product is that's referred to in
11 that paragraph 1?

12 A. It would have been a product called C60.

13 Q. Is that product contained on either of the chemical lists
14 that we've talked about today?

15 A. I don't know. I do not see it, no.

16 Q. It's fair to say that's another one that got left off the
17 list when you were making the rounds; is that correct?

18 A. Yeah.

19 Q. Okay. What is C60?

20 A. It's an aerosol can of a spray degreaser.

21 Q. And what cutters were used -- or what cutters was the C60
22 used to clean?

23 A. The Gerber automated cutters.

24 Q. Any others?

25 A. No.

1 Q. Was C60 the cleaner that was used on the Gerber automated
2 cutters the entire time that they were used at the
3 facility?

4 A. Yes.

5 Q. And where was the C60 located?

6 A. There would have been one can at the cutters and the rest
7 of the case would have been back in the cage area.

8 Q. In the staging area of the cage?

9 A. Yes.

10 Q. And so when a cutter needed to clean the automated cutting
11 machine, they would just find that can and spray it down
12 or how would that work?

13 A. No. I cleaned them.

14 Q. How often did you clean those cutters?

15 A. Daily.

16 Q. And then when you got done with your can, you just threw
17 it in the general trash?

18 A. Yes.

19 Q. About how many cans would you go through a week, say,
20 cleaning the cutters?

21 A. A week?

22 Q. Yeah.

23 A. Two.

24 Q. Okay. So about -- so you'd go through about two cans of
25 C60 a week in order to clean the Gerber automated cutters,

1 correct?

2 A. Yes.

3 Q. And then when you were done, you would throw the can in
4 the trash?

5 A. Yes.

6 Q. And then that would go to the trash compactor and get
7 smashed up?

8 A. Yes.

9 Q. And then the trash compactor would push it on out into the
10 45-yard roll-off so Himco could come take it away,
11 correct?

12 A. Yes.

13 Q. Did you tell Mr. Devetski or Ms. Hartzler about the C60?

14 A. Yes.

15 Q. Mr. Alexander, I'm going to hand you a document that we're
16 going to label as Plaintiffs' Exhibit 32. I'd like you to
17 please take a look at it.

18 (Plaintiffs' Exhibit 32 marked for
19 identification.)

20 Q. I can tell you this is a document we were provided in
21 discovery from Flexsteel's counsel. You can see at the
22 top it has a date of 12-27-01, "RVI General Material List,
23 effective January 01, 2002." Do you see that?

24 A. Yes.

25 Q. And there are a few entries on this I just want to ask you

1 about.

2 About midway down the page, there's an entry for a
3 Super 74 spray glue. Do you see that?

4 A. Yes.

5 Q. Do you know what that is?

6 A. No, I do not.

7 Q. Do you know if it has TCE in it?

8 A. No, I do not.

9 Q. Below that there's an 18-ounce degreaser. Do you see
10 that, just about five lines down?

11 A. Yes.

12 Q. Do you know what that is?

13 A. No.

14 Q. Do you know if that has TCE in it?

15 A. No.

16 Q. Have you ever seen this list before?

17 A. No, I haven't.

18 Q. Okay. Now I'm going to -- now I just want to ask you
19 about a few entries near the back. For instance, if you
20 turn to the page Bates labeled FLEX03_00079783/15 --

21 A. Slash 15?

22 Q. Yeah.

23 MR. MICHAEL: Bob, just so you know, so our
24 record's clear, when we got this document, we had a
25 cover sheet Bates labeled FLEX03_00079783 with 79

1 un-Bates labeled pages behind it. So in order to
2 keep things straight, we took the label of the cover
3 sheet and then did a slash for each page that
4 followed. I'm not sure why the individual pages
5 weren't Bates labeled. Our IT people said for some
6 reason with this kind of file you can't do it. So
7 but that's why the numbers are this way.

8 MS. JONES: Excuse me, Rod, does that have an
9 exhibit number?

10 MR. MICHAEL: Yes, it does. It's Plaintiffs'
11 Exhibit 32.

12 MS. JONES: Thank you.

13 MR. MICHAEL: You're welcome.

14 BY MR. MICHAEL:

15 Q. Okay. On the 15th page of this document, there are
16 several entries for tubing that end in the letters "HRPO."
17 Do you see those?

18 A. Yes.

19 Q. Do you know what HRPO stands for?

20 A. No, I do not.

21 Q. Have you ever heard the phrase hot-rolled, pickled and
22 oiled?

23 A. Yes.

24 Q. Can you tell me what hot-rolled, pickled and oiled means?

25 A. No.

1 Q. Do you know if the tubing that Flexsteel was using in
2 connection with its welding was being supplied hot-rolled,
3 pickled and oiled?

4 A. No.

5 Q. You don't know one way or the other?

6 A. No, I do not.

7 Q. I'm going to hand you a document we're going to mark as
8 Plaintiffs' Exhibit 32 and ask you to take a look at it.
9 33, I'm sorry.

10 MR. MICHAEL: Did I misspeak with the person on
11 the phone? Okay. Angela tells me no, so you're
12 okay. So we're on Plaintiffs' Exhibit 33.

13 (Plaintiffs' Exhibit 33 marked for
14 identification.)

15 BY MR. MICHAEL:

16 Q. And do you see Plaintiffs' Exhibit 33 is a fax on Dygert
17 Seating letterhead, dated January 3, '02, from Rita
18 Stephan to Tim Hall?

19 A. Yes.

20 Q. Okay. You know who Rita Stephan is, correct?

21 A. Yes.

22 Q. She was the office manager?

23 A. Yes.

24 Q. Do you know who Tim Hall was?

25 A. No, I do not.

1 Q. Okay. And it says, "Dear Tim, following is the list you
2 requested of factory supplies. Thanks, Rita." Do you see
3 that?

4 A. Yes.

5 Q. And then if you turn two pages back, about nine rows down
6 there's an entry for 10 gallons of general purpose
7 cleaner. Do you see that?

8 A. Yes.

9 Q. Do you know what that general purpose cleaner was?

10 A. I believe that was the hand soap used in the bathrooms.

11 Q. It came in 10-gallon volumes?

12 A. One-gallon jugs.

13 Q. Okay. If you go two up from the bottom, do you see
14 there's an entry for degreaser?

15 A. Yes.

16 Q. And it's 24 quarts?

17 A. Yes.

18 Q. Do you know what kind of degreaser that was?

19 A. No, I do not.

20 Q. And so it's fair to say you don't know if the degreaser
21 had the TCE in it or not, correct?

22 A. Correct.

23 Q. Now, you've talked about aerosol degreasers, I believe in
24 your affidavit.

25 A. Yes.

1 Q. How was Flexsteel using its liquid degreasers?

2 A. The only liquid cleaner I know of was called Simple Green
3 that they mixed with water.

4 Q. Was that a degreaser?

5 A. I believe it was a cleaner/degreaser, yes.

6 Q. Do you know that for sure?

7 A. I'm pretty sure, yeah.

8 Q. Do you know if the 24 quarts of degreaser in Plaintiffs'
9 Exhibit 33 are the Simple Clean that you're aware of?

10 A. No, I don't. I'm not sure what that degreaser would have
11 been.

12 Q. Did the Simple Clean have TCE in it?

13 A. No.

14 Q. Can you clean oil off of metal with water?

15 A. To a certain extent, yes.

16 Q. It's your testimony you can clean oil with water off of
17 metal tubing?

18 A. Well, not just pure water, no, no. You'd have to have a
19 cleaner.

20 Q. You'd have to have a solvent in there, right?

21 A. Well, use some type of surfactant or something, yes.

22 Q. A solvent like a chlorinated solvent such as TCE or PCE?

23 A. Not necessarily chlorinated, no.

24 Q. But that would be one option, correct?

25 A. That would be one, yes.

1 Q. In fact, isn't it very common industry practice to use TCE
2 as a solvent to clean oil off of metal?

3 A. In some instances, yes. We tried not to as much as
4 possible because it would normally take the color off of
5 our vinyl.

6 Q. Well, don't you typically dry the metal before you put
7 anything on it after its been degreased?

8 A. Yeah, but they used the same cleaners in various stages,
9 you know, that take ink or grease or oil off of the covers
10 after they were upholstered; but yeah.

11 Q. Did you ever see any of the metal tubing in the frame shop
12 being degreased?

13 A. Yes.

14 Q. And how was that process conducted?

15 A. They were wiping it with rags using lacquer thinner.

16 Q. So in the frame shop, they would wipe the tubing down with
17 lacquer thinner to clean it?

18 A. Yeah. They weren't building frames though. They were
19 building carts for the main plant, and they'd wipe them
20 off with lacquer thinner and then --

21 Q. And then what happened with those rags, they just went in
22 the general trash?

23 A. Yes.

24 Q. Did you ever see any of the steel tubing that was going to
25 be used in the production of frames being degreased?

1 A. No.

2 Q. Do you know how that process was conducted?

3 A. No, I don't.

4 Q. I'm going to hand you a document we're going to mark as
5 Plaintiffs' Exhibit 34 and ask you to please take a look
6 at it.

7 (Plaintiffs' Exhibit 34 marked for
8 identification.)

9 Q. And just before we move on, on Plaintiffs' Exhibit 33, am
10 I correct to my understanding that you don't know what the
11 24-quart degreaser is that's referred to on the third page
12 of Exhibit --

13 A. That's correct, I do not.

14 Q. You got Plaintiffs' Exhibit 34 in front of you now?

15 A. Yes.

16 Q. Okay. And this is a fax. This one is on Flexsteel Dygert
17 Seating Division letterhead. And it's from Todd Van Der
18 Jagt to a Jeff Baroth. Do you see that?

19 A. Yes.

20 Q. Do you know who Todd Van Der Jagt is?

21 A. Yes, I do.

22 Q. Was he in charge of engineering?

23 A. Yes.

24 Q. Who is Jeff Baroth; do you know?

25 A. No idea.

1 Q. Okay. Have you heard of Voyager Products?

2 A. Yes.

3 Q. Have you ever talked to anybody over there?

4 A. Their people in the shipping department once or twice.

5 Q. Just casual conversation?

6 A. Yeah. I'd go over there to pick something up and just
7 chitchat.

8 Q. Did you purchase products from Voyager from time to time?

9 A. I went over there a couple times to pick up frames when we
10 needed them.

11 Q. So from time to time you purchased frames from Voyager?

12 A. Yes.

13 Q. And on this particular document, Plaintiffs' Exhibit 34,
14 it says, "Jeff, I would like to take this opportunity to
15 thank you for taking time to come over and look at the
16 materials and equipment remaining at our frame shop. Per
17 our conversation, here is the information you requested."
18 And then there are several items of tubing. There's a
19 5,314 pieces of one-inch outside diameter by 71.625 by
20 16-gauge tube. Do you see that?

21 A. Yes.

22 Q. We'll wait for Bob.

23 MR. DEVETSKI: Go ahead. Sorry.

24 BY MR. MICHAEL:

25 Q. And it's HRPO as well. Do you see that?

1 A. Yes.

2 Q. And then there's 282 pieces of one-inch outside diameter
3 tubing, almost 6 feet in length and it's HRPO, and 792
4 pieces of one-inch OD 16-gauge tubing, also HRPO. Do you
5 see that?

6 A. Yes.

7 Q. Okay. Now, by our math, that would be approximately
8 10,000 square feet of metal that was coated in oil on that
9 particular day. How would Flexsteel remove that oil prior
10 to providing a finished product to its customers during
11 the time the frame shop was in operation?

12 A. I have no idea how Flexsteel would have.

13 Q. You would agree an aerosol degreaser probably wouldn't cut
14 the trick -- cut the job, correct?

15 A. That's correct.

16 Q. And I believe in your affidavit you had mentioned the only
17 degreasers you were aware of were aerosol degreasers,
18 correct?

19 A. Yes.

20 Q. Okay. But you didn't know about this document that had
21 the 24 quarts of degreaser that we marked as Plaintiffs'
22 Exhibit 33 when you did your affidavit, right?

23 A. No.

24 Q. Is that correct?

25 A. That's correct.

1 Q. And you didn't consider how the tubing in the frame shop
2 would be cleaned of oil at the time that you did your
3 affidavit, correct?

4 MR. DEVETSKI: Objection, assumes facts not in
5 evidence. You can answer the question.

6 A. I wouldn't have any idea, but I don't know. Can I comment
7 on this? Is that okay?

8 MR. DEVETSKI: Answer his questions.

9 BY MR. MICHAEL:

10 Q. Sure.

11 A. I don't think this was from Flexsteel is what I'm getting
12 at. I think this was leftover steel from Dygert.

13 Q. On December 18 of 2000?

14 A. Yeah.

15 Q. Well, didn't Flexsteel operate the frame shop for a period
16 of time after it purchased Dygert Seating in March of '97?

17 A. A very short period of time, yeah.

18 Q. What's your understanding of when Flexsteel closed the
19 frame shop?

20 A. Well, I don't really know. But I know they quit producing
21 frames over there. And we had a lot of stuff left just
22 sitting in the building waiting to be taken out. So if
23 this was steel that was left over from Dygert, 99 percent
24 of it wouldn't have been degreased. We didn't degrease
25 our frames.

1 Q. How long do you believe Flexsteel operated the frame shop?

2 A. I don't remember.

3 Q. Do you know when that -- you don't know when that building
4 was closed down then, correct?

5 A. No.

6 Q. And this is December 18, 2000. Do you see that?

7 A. Yeah.

8 Q. Okay. Do you know if Flexsteel closed this frame shop
9 sometime in 2000?

10 A. No, I don't. I don't really know when they did that. But
11 what I'm trying to get at, you know, I have no clue how
12 they would have degreased it.

13 Q. And that was my question.

14 A. Yeah.

15 Q. You just don't know?

16 A. Yeah.

17 Q. I'm going to hand you a document we're going to mark as
18 Plaintiffs' 35.

19 (Plaintiffs' Exhibit 35 marked for
20 identification.)

21 Q. Do you have Plaintiffs' 35 in front of you?

22 A. Yes.

23 Q. Okay. You see up at the top right-hand corner it says,
24 "Flexsteel Part Number System, Revised D, January 27,
25 '01"? Do you see that?

1 A. Yes.

2 Q. "TRV"?

3 A. Yes.

4 Q. Does that look like Todd Van Der Jagt's initials to you?

5 A. Yes.

6 Q. Okay. And then underneath Flexsteel Part Number System,
7 it says, "1. Final Manufactured Parts." And then it
8 says, "A part with all operations completed, including
9 painting and/or degreasing will constitute a finished
10 part." Do you see that?

11 A. Yes.

12 Q. Do you know how many parts were being manufactured by
13 Flexsteel that required painting and/or degreasing?

14 A. No.

15 Q. That would be a better question for Mr. Van Der Jagt?

16 A. Yes.

17 Q. We talked earlier about the LPS degreaser, and there was
18 an MSDS sheet that Ms. Hartzler had provided you that
19 showed that it had, I believe, 90 to 100 TCE in it. Do
20 you remember that?

21 A. Yes.

22 Q. Do you know if there was ever any LPS liquid degreaser
23 that was used to degrease metal parts in the frame shop?

24 A. No.

25 Q. You don't know?

1 A. No, I don't know.

2 Q. Okay. Could you look at Plaintiffs' Exhibit 10, please.

3 A. 10?

4 Q. Yes. Have you seen Plaintiffs' Exhibit 10 before?

5 A. No.

6 Q. Were you in charge of maintenance in 1996?

7 A. Yes.

8 Q. And that was -- you can see this says, "Machinery &
9 Equipment Appraisal, Prepared For: Mr. Gregg Gaskill,
10 Dygert Seating," and it's dated August 15, 1996. Do you
11 see that?

12 A. Yes.

13 Q. And that was a few months before Flexsteel purchased all
14 the assets of Dygert Seating, correct?

15 A. Yes.

16 Q. Were you ever on the Goshen Cushion site --

17 A. Yes.

18 Q. -- prior to the time it closed? How often were you there?

19 A. Prior to when it closed, no, not prior to when it closed.

20 Q. Were you there after it closed?

21 A. Yes.

22 Q. Why were you there after it closed?

23 A. To empty the building out.

24 Q. And what did you do when you went there to empty the
25 building out?

1 A. Pretty much loaded up sewing machines to come up to
2 Elkhart to the plant there. All the welding equipment was
3 put into one area where it was sold and disposed of. And
4 then they had a paint booth operation there that I had to
5 disassemble and trash.

6 Q. Okay. When did you do those things, before or after the
7 Flexsteel acquisition?

8 A. That was before.

9 Q. You think it was or you know it was? You kind of
10 hesitated there.

11 A. I think it was before. I'm pretty sure it was.

12 Q. Okay. So Goshen Cushion closed in approximately December
13 1996. Does that sound right?

14 A. I couldn't swear to it, but --

15 Q. But you were never there when it was still operating?

16 A. No.

17 Q. Okay. That's correct?

18 A. Yes, that's correct.

19 Q. And then you believe sometime between the time Goshen
20 Cushion closed and the time Flexsteel purchased Dygert
21 Seating's assets, you went over and emptied everything out
22 and moved certain equipment to Elkhart, sold other
23 equipment and disposed of a paint booth operation,
24 correct?

25 A. Yes.

1 Q. How did you dispose of the paint booth operation?

2 A. Tore it apart, loaded up into an open-top container and
3 had it hauled away.

4 Q. Who hauled it away?

5 A. I don't really remember.

6 Q. Was there any contaminated water left over from the
7 operations of that paint booth prior to the time that you
8 tore it apart and had it hauled away?

9 A. Yes.

10 Q. And what did you do with that?

11 A. That was put in buckets.

12 Q. How big were the buckets?

13 A. They were five-gallon buckets.

14 Q. Do you remember about how many?

15 A. No, I don't.

16 Q. And then after you put the contaminated water from the
17 paint booth into the five-gallon buckets, what did you do
18 with it?

19 A. Left it there. I have no idea where it went after that.

20 Q. Were there any other contaminated materials that you put
21 into any five-gallon buckets when you were over there?

22 A. No.

23 Q. Did you do any -- did you identify any other hazardous
24 waste when you went over to clean out the facility?

25 A. No.

1 Q. Were you the only person who ever went over and
2 transported materials, equipment from the Goshen facility
3 to the Elkhart facility?

4 A. No.

5 Q. Who did that with you?

6 A. It would have been any of our truck drivers.

7 Q. How many times did you go personally?

8 A. I went once when they were selling the welders and then I
9 went back again the second time to take the paint booth
10 thing apart.

11 Q. Okay. Which time did you load sewing machines?

12 A. That was when the welders were being sold.

13 Q. Okay. And when you say the "welders," can you tell me
14 what exactly you're talking about?

15 A. They were Miller MIG welders.

16 Q. So you went over at the time that the Miller MIG welders
17 were being sold?

18 A. Yes.

19 Q. And you put them in one location so the buyer could come
20 get them?

21 A. Yes.

22 Q. Was there anything other than Miller MIG welders that the
23 buyer was purchasing, to your knowledge?

24 A. Not that I'm aware of, no.

25 Q. Okay. And then after you moved the Miller MIG welders to

1 a central location, you loaded up a bunch of sewing
2 machines and then took those back to Elkhart?

3 A. I loaded them up. I didn't take them back, no.

4 Q. What did you do with the sewing machines?

5 A. One of the truck drivers would have taken them back to
6 Elkhart.

7 Q. Okay. Did you load anything other than sewing machines up
8 in the truck to be taken back to Elkhart?

9 A. No.

10 Q. Okay. And then that was all you did on that particular
11 trip, correct?

12 A. Yes.

13 Q. Okay. And then you went back a second time, took apart
14 the paint booth, put the contaminated water in five-gallon
15 buckets, and then had somebody with an open truck come in
16 and haul the paint booth away?

17 A. Yes.

18 Q. They just take it to the dump, or what did they do with
19 it; do you know?

20 A. I'm not sure.

21 Q. You paid them, said get rid of this for me, and they took
22 it?

23 A. I didn't pay them, no.

24 Q. Dygert Seating paid them?

25 A. Yeah.

1 Q. And then they took it away, and you don't know what
2 happened to it?

3 A. Yes.

4 Q. And then the five-gallon buckets, just you left them there
5 and never saw them again; and you don't know what happened
6 to them?

7 A. That's correct.

8 Q. Those are the only two times you were ever at Goshen
9 Cushion?

10 A. That I can remember, yes.

11 Q. Now, in the Plaintiffs' Exhibit 10, the appraisal we were
12 talking about, I just want to ask you about a few entries
13 in here. We'll go by Bates number because it's easier to
14 follow that way. FLEX01_ 4752, there's an entry for,
15 "Eastman Brute material cutter." Do you see that?

16 A. Yes.

17 Q. Does that particular material cutter -- or did Flexsteel
18 use degreaser spray containing TCE to clean that type of
19 cutter?

20 A. No.

21 Q. How was the Eastman Brute material cutter cleaned?

22 A. The only time I can ever recall one of those particular
23 type of cutters being cleaned was just blown off with an
24 air hose.

25 Q. Now, I've been told that from time to time the cutters

1 would get dull and that there was an aerosol can that
2 would be sprayed on them to make them work better. Did
3 you ever see that happen?

4 A. No.

5 Q. You didn't ever see any cutters spraying aerosol cans on
6 the cutting blades when they got dull so that they would
7 work better?

8 A. No.

9 Q. Okay. On 4753, there's a Gerber at the bottom. There's
10 an asterisk next to a Gerber S-93-5 Medium Ply Cutter.

11 A. Yes.

12 Q. Is that the one you would use the C60 on to clean?

13 A. Yes, the Gerber we used C60.

14 Q. All the Gerber cutters? Because I see some other entries
15 in here for Gerber cutters.

16 A. Yes, all of them.

17 Q. If you go to FLEX01_ 4781, at the very bottom of the page
18 there's an entry for an Automated Finishing Hot Water Pass
19 Through Vapor Degreaser, and it gives the model number and
20 the dimensions. Do you see that?

21 A. Yes.

22 Q. Did you ever see that degreaser anywhere?

23 A. No.

24 Q. Do you know what happened to that degreaser?

25 A. No, I do not.

1 Q. Is it fair to say, to your knowledge, you don't know
2 whether or not they used that particular vapor degreaser
3 in connection with operations in Elkhart?

4 A. Yes. Well, say that again.

5 Q. To your knowledge, do you know whether or not they ever
6 used that particular vapor degreaser in connection with
7 operations in Elkhart?

8 A. In Elkhart?

9 Q. Yes.

10 A. No, they did not.

11 Q. And how do you know that?

12 A. Because I never saw that equipment at our plant in
13 Elkhart.

14 MR. MICHAEL: All right. We've got two minutes.
15 Let's go ahead and stop now.

16 VIDEOGRAPHER: Off the record at 3:30.

17 (Recess taken.)

18 (Ms. Hartzler joined the deposition.)

19 VIDEOGRAPHER: Back on the record at 3:46.

20 Please continue.

21 BY MR. MICHAEL:

22 Q. Mr. Alexander, can you turn back to Plaintiffs' Exhibit
23 22, please. It's your affidavit.

24 Do you have that in front of you?

25 A. Yes.

1 Q. Okay. On the third page, the very last paragraph, you
2 said, "During my employment with Dygert Seating, Inc., the
3 Dygert Seating Division of Flexsteel and PBD Corporation,
4 TCE, PERC and TCA were never purchased in drums and were
5 never used in the manufacturing process at any of these
6 businesses." Do you see that?

7 A. Yes.

8 Q. And what did you mean by "manufacturing process"?

9 A. That they were never used on any type of a consistent
10 piece by piece use in the production procedures.

11 Q. Okay. You weren't referring to maintenance activities; is
12 that correct?

13 A. Yes.

14 Q. Cleaning of equipment, is that correct?

15 A. Yes, that's correct.

16 Q. Okay. And you weren't referring to any prototyping work
17 that was being done in the engineering department; is that
18 correct?

19 A. That's correct.

20 Q. In paragraph 6 it says, "The only adhesive that I can
21 recall was ever purchased in bulk for use by Dygert
22 Seating, Inc., the Dygert Seating Division of Flexsteel or
23 PBD Corporation was premium adhesive, except the
24 water-based adhesive used by the Dygert Seating Division
25 of Flexsteel described below." Do you see that?

1 A. Yes.

2 Q. Now, what did you mean by "bulk"?

3 A. The 55-gallon drums.

4 Q. That's what you were referring to when you used the word
5 bulk?

6 A. Yes.

7 Q. And we talked earlier today about LPS degreaser. Do you
8 know how much LPS was being purchased by Flexsteel?

9 A. No.

10 Q. Mr. Alexander, I'm going to hand you a document that we're
11 going to mark for identification as 36 and ask you to
12 please take a look at it.

13 (Exhibit 36 marked for identification.)

14 Q. You see on the first page of Plaintiffs' Exhibit 36
15 there's a file and somebody wrote, "Fixed Assets -
16 Listings & Appraisals." Do you see that?

17 A. Yes.

18 Q. I just want to direct your attention to a couple entries
19 on the page that's Bates numbered FLEX01_ 4592.

20 A. Yes.

21 Q. In the very bottom of that list it mentions Dynaflex
22 molds. They're in there twice. Do you see that?

23 A. Yes.

24 Q. Do you know what those are?

25 A. No.

1 Q. Do you recall any molding being done in Elkhart during any
2 of the time that you worked there?

3 A. Not in Elkhart, no. But they did have a couple of -- they
4 were like an aluminum frame that seat parts were molded
5 in. It might be that that came back from a supplier.

6 Q. Okay. In Elkhart they had an aluminum frame that they
7 would mold seat parts in?

8 A. Well, they didn't mold them there. They were stored there
9 after the supplier sent the frames to us. They no longer
10 made the seat component. They sent the mold frame
11 container back to us.

12 Q. All right. Let me see if I understand this correctly.
13 There was a supplier that had a mold for making the foam
14 component of the seat, and that particular mold belonged
15 to Dygert Seating, correct?

16 A. That's correct, yes.

17 Q. And then Dygert Seating had got the mold back from the
18 supplier and put it on the aluminum frame and just stored
19 it there?

20 A. Well, the mold itself was part of the aluminum frame.

21 Q. And that was stored in the Elkhart --

22 A. Yes.

23 Q. To your knowledge, was it ever used?

24 A. No.

25 Q. Do you know anything about the Ply Foam Division?

1 A. No, I don't?

2 Q. You've never heard that phrase?

3 A. I've heard of it, but I don't know anything about what
4 they did or --

5 Q. What have you heard about it?

6 A. Just the name mentioned.

7 Q. Okay. And if we go to FLEX01_ 4594, on line 67, there's
8 an entry for a degreaser. Do you see that?

9 A. Yes.

10 Q. I think you've testified you don't remember seeing any
11 degreasers in Elkhart; is that correct?

12 A. In Elkhart, other than the spray degreasers, yes, that's
13 correct.

14 Q. I'm talking about a degreaser machine.

15 A. Oh, a degreaser machine, yes. No, I've never seen one.

16 Q. So it'd be fair to say that with respect to the degreaser
17 identified on line 67 there, you don't know what it is or
18 where it went or anything, correct?

19 A. That's correct.

20 Q. And same with the entry on line 78, the water wash
21 degreaser?

22 A. That's correct.

23 Q. I'm going to hand you a document we're going to mark as
24 Plaintiffs' Exhibit 37, and I'd like you to please take a
25 look at it.

1 (Plaintiffs' Exhibit 37 marked for
2 identification.)

3 Q. Do you have Plaintiffs' Exhibit 37 in front of you?

4 A. Yes.

5 Q. You see at the top it's to Dave Dygert, Gregg Gaskill and
6 Ben Marshall; and it's from a Greg Sieckman. Do you see
7 that?

8 A. Yes.

9 Q. Do you recognize the name Greg Sieckman?

10 A. No, I don't.

11 Q. Okay. And it's dated 6-22-2000, "RE: Trip of 6/20, 21 -
12 JK/CS layout." Do you see that?

13 A. Yes.

14 Q. And it says, "The following are comments, suggestions,
15 observations concerning what we briefly talked about
16 concerning an improved method to facilitate the increased
17 quantities expected of JK products and the addition of CS
18 type beds." Do you see that?

19 A. Yes.

20 Q. Do you know what that refers to when it says "JK
21 products"?

22 A. Jackknife sofas.

23 Q. Okay. And what about "CS type beds"?

24 A. That I'm not real sure what the CS is.

25 Q. In paragraph 1 it says, "We want to set up a gluing booth

1 for this product. The booth unused in Dunkirk will be
2 picked up by Elkhart for use there." Do you see that?

3 A. Yes.

4 Q. Do you recall a glue booth being shipped to Elkhart from
5 Dunkirk?

6 A. No, I don't.

7 Q. How many glue booths were there in the main plant in
8 Elkhart?

9 A. We started out with two and ended up with one.

10 Q. Okay. When you say "we started out with two," can you
11 give me an approximate timeframe?

12 A. No.

13 Q. Was it before or after the Flexsteel acquisition?

14 A. I would say before.

15 Q. Were there two glue booths during the time that Flexsteel
16 operated the property?

17 A. Yes.

18 Q. And then sometime after Flexsteel sold part of the assets
19 to PBD Corporation, you went down to one glue booth?

20 A. Yes.

21 Q. Was that one glue booth still there when Heritage
22 Financial sold the assets?

23 A. Yes.

24 Q. Now, the last sentence of that paragraph 1 it says, "The
25 glue becomes localized for exhaust purposes and is not

1 getting on the trim tables and possibly cover." Do you
2 see that? First page in paragraph 1, there's a full
3 sentence down there that's indented over.

4 A. Oh, okay. Yeah.

5 Q. Do you see where I am?

6 A. Yes.

7 Q. Do you have an understanding as to what that sentence
8 means?

9 A. I can give you my interpretation of it, I guess.

10 Q. Well, go ahead because I'm trying to get help on
11 understanding that.

12 A. I'm thinking that what they're trying to say is that the
13 exhaust is picking the glue up before it's actually
14 hitting the entire product.

15 Q. Okay. And what kind of an exhaust system was present in
16 the glue booths?

17 A. It's a power ventilated fan.

18 Q. And you mentioned earlier a couple, I believe a man and a
19 woman, who had complained about fumes associated with
20 working in the glue booth?

21 A. Yes.

22 Q. Was that power ventilated fan in place at that time?

23 A. Yes, it was.

24 Q. Where did the power ventilated fan vent the exhaust fumes
25 to?

1 A. Outside the building.

2 Q. Was it hooked to a duct that ran through the --

3 A. Yes.

4 Q. -- the wall?

5 A. Yes.

6 Q. Just so you can help me understand the process, can we go
7 back to the picture that we marked as Plaintiffs' Exhibit
8 30? And will you make a little -- let's do a circle in
9 the location of the glue booth and then just put "GB" next
10 to it so we know that's what that refers to.

11 A. (Complying.)

12 Q. Okay. And I'm going to just look real quick at where you
13 marked that.

14 Okay. And you showed us one there. Is that the one
15 that was still remaining in 2007 when Heritage sold the
16 business?

17 A. Yes.

18 Q. Okay. Where was the other glue booth that was removed
19 sometime prior to that?

20 A. It was back a little bit farther to what would have been
21 the west.

22 Q. Can you go ahead and draw it?

23 A. Circle it?

24 Q. Yeah.

25 A. Do you need the GB?

1 Q. Please.

2 A. (Complying.)

3 Q. And were the exhaust from the power ventilated fans run
4 through the ceiling?

5 A. Through the wall.

6 Q. Through the wall. And that was the case for both glue
7 booths?

8 A. No.

9 Q. Okay. Which one ran through the wall, the one to the --

10 A. The first one.

11 Q. The one to the east?

12 A. Yes.

13 Q. Okay. How was the one to the west ventilated?

14 A. It was not.

15 Q. Did anybody ever complain about glue fumes in that one?

16 A. No. That was the glue booths that Flexsteel set up for
17 us. It was a two-part water and -- basically.

18 Q. Okay. So that one only used water-based glues?

19 A. Yes.

20 Q. And then in 2000, you wouldn't know what the particular
21 glue booth is that this memo is referring to that was
22 being moved from Dunkirk?

23 A. No.

24 Q. Okay. Mr. Alexander, I'm going to hand you a document --
25 or ask Angela to hand you a document that we're marking as

1 Plaintiffs' Exhibit 38, and I'd like you to take a look at
2 it.

3 (Plaintiffs' Exhibit 38 marked for
4 identification.)

5 Q. Okay. Do you see Exhibit 38 is a spreadsheet and at the
6 top it says, "Small Tools & Supplies List - December 29,
7 2001"?

8 A. Yes.

9 Q. I'd like you to flip back to page 3 of 6. The Bates
10 number is FLEX01_ 3412.

11 In the middle of the page there's a reference to two
12 barrel dollies. Do you see that?

13 A. Yes.

14 Q. What were those used for?

15 A. The 55-gallon glue barrels.

16 Q. Why were there two of them?

17 A. Because we typically had three barrels on the property at
18 one time. One barrel would have been in use. There would
19 have been a second barrel ready for when that one ran out,
20 and then there was generally an empty barrel there.

21 Q. Okay. And below that there's a barrel lift for the
22 forklift. Do you see that?

23 A. Yes.

24 Q. And what was that used for?

25 A. To pick the barrel up off the back of the truck and set it

1 down on the barrel dolly.

2 Q. So the barrels didn't come in on pallets?

3 A. Not normally.

4 Q. And when you say "pick it off the truck," you're talking
5 about the delivery truck for whoever was supplying the
6 55-gallon adhesive barrel?

7 A. Yes.

8 Q. Were there any other types of barrels that were ever
9 lifted using the forklift?

10 A. Well, yeah, yeah. The barrel of hydraulic fluid when it
11 was delivered would have had to have been picked up with a
12 forklift.

13 Q. Okay. And we'll get to that in a moment. You're talking
14 about the 55-gallon drums of hydraulic fluid that was used
15 in the frame shop?

16 A. Yes.

17 Q. Any others?

18 A. Not that I can think of, no.

19 Q. Down on that same page, four up from the bottom, there's a
20 reference to four "glue guns - hot melt."

21 A. Yes.

22 Q. Where were those glue guns used?

23 A. Sewing, sewing department.

24 Q. And how would the sewing department use the hot melt glue
25 guns?

1 A. To make little spot repairs on the seat covers.

2 Q. What type of glue did the sewing department use with the
3 hot melt glue guns?

4 A. They're like a quarter-inch diameter glue stick that's
5 solid. You stick it in the end of the gun and plug it in
6 and it gets hot, and you pull the trigger and it melts it
7 as it oozes out.

8 Q. Do you know if those sticks have any TCE in them?

9 A. Not to my knowledge they didn't.

10 Q. Do you know one way or another as we sit here?

11 A. I would say no, they do not.

12 Q. Did you ever see an MSDS sheet for a glue stick?

13 A. No.

14 Q. So you really don't know what's in the glue sticks,
15 correct?

16 A. Not specifically, other than there was never anything like
17 that listed on the labeling for it.

18 Q. But you never saw an MSDS sheet?

19 A. No.

20 Q. Then below that there's a listing for two glue guns on
21 both, and then it says, "Old glue." Do you know what that
22 is?

23 A. Not sure what they're referring to there, no.

24 Q. Okay.

25 A. Wait. It's probably supposed to be booth. There were two

1 glue guns attached to the booth.

2 Q. To the booth you told me about just a few minutes ago?

3 A. Yes.

4 Q. And that's the one that was ventilated through the wall?

5 A. Yes.

6 Q. And then below that it says, "12 glue guns with pots." Do
7 you see that?

8 A. Yes.

9 Q. What were those glue guns?

10 A. Those were the one-quart glue guns that you actually
11 filled the cup, screw it to the bottom of the glue gun
12 that the individual installers would use.

13 Q. So there were 12 installers working at a time?

14 A. At one point in time, yes.

15 Q. Was that during the time that Flexsteel operated the
16 facility?

17 A. Probably before then.

18 Q. During the time that Flexsteel operated the facility,
19 about how many people with glue guns would be operating at
20 the same time?

21 A. With the glue guns with the pots or --

22 Q. Yeah, the one we're talking about.

23 A. -- or including the booth? Okay. Six to seven.

24 Q. And that would be for eight hours a day?

25 A. Yes.

1 Q. I'm going to ask Angela to hand you a document we're going
2 to mark as Plaintiffs' Exhibit 39.

3 (Plaintiffs' Exhibit 39 marked for
4 identification.)

5 Q. Do you see Plaintiffs' Exhibit 39 is a memo from Tim Hall
6 to Jim Fransen and Todd Van Der Jagt dated February 25,
7 2002?

8 A. Yes.

9 Q. You see that? And it says, "Attached is the list updating
10 the status of the assets remaining at the Elkhart
11 facility." And I'd like to ask you about just a couple of
12 entries on this one as well.

13 If you flip to the page Bates number FLEX01_ 1914,
14 five entries down there's an entry for a glue station,
15 GRACO-Huskie.

16 A. Yes.

17 Q. Is that the brand of the glue booth that was vented
18 through the wall that you told me about?

19 A. No.

20 Q. What was the glue station GRACO-Huskie?

21 A. That would have been one that they used back in the
22 contract furniture line.

23 Q. So a glue station then is different from a glue booth?

24 A. Yes.

25 Q. Okay. And where was the concrete -- or the contract --

1 A. Contract furniture.

2 Q. You just put a "CF" on Exhibit 30 so we know where that
3 was being made.

4 A. (Complying.)

5 Q. Okay. And you've marked the northwest portion of the main
6 facility there in the area where the flame laminator was,
7 correct?

8 A. Yes, that's where.

9 Q. When did the flame -- I believe you indicated earlier that
10 at some point in time they had stopped using the flame
11 laminator. Do you know when that was?

12 A. No, I don't.

13 Q. Was it before or after Flexsteel acquired the property?

14 A. Before.

15 Q. How long did they use the flame laminator; do you know?

16 A. Not really. It wasn't long. I don't know exactly how
17 long.

18 Q. Okay. I'm going to ask Angela to hand you a document I'm
19 going to mark as Exhibit 40. I'd like you to please take
20 a look at it.

21 (Plaintiffs' Exhibit 40 marked for
22 identification.)

23 Q. Okay. Do you see Plaintiffs' Exhibit 40 is a letter dated
24 June 29, 1994, addressed to Mr. Lucchese, "RE: Thermal
25 Oxidizer Air Construction Permit"?

1 A. Yes.

2 Q. And that was the permit that was obtained in connection
3 with the flame laminator, correct?

4 A. Personally I'm not sure, but --

5 Q. Okay. You weren't involved in obtaining any permits
6 related to the flame laminator, fair?

7 A. No.

8 Q. Is that fair to say?

9 A. Yes, that's correct.

10 Q. On the second paragraph it says, "There will be subsequent
11 documents that will forwarded to you by the IDEM, OAM.
12 Should you receive anything, please contact me so that I
13 may review it with you. After you receive the
14 registration letter, we should establish a meeting time to
15 discuss additional areas of reporting as related to the
16 thermal oxidizer. There were also other areas which were
17 discussed with Mr. Dick Paulen from Barnes & Thornburg
18 that should be addressed." Do you see that?

19 A. Yes.

20 Q. Okay. Did you ever participate in any discussions with
21 representatives of Industrial Safety & Environmental
22 Services and Mr. Dick Paulen from Barnes & Thornburg
23 concerning areas of reporting that needed to be addressed?

24 A. No.

25 Q. Did you ever participate in any discussions with anyone

1 concerning areas of reporting in connection with the
2 operations of the frame shop or the main shop with respect
3 to reporting obligations?

4 A. No.

5 Q. Did you ever have any discussions with anyone concerning
6 reporting requirements as related to the thermal oxidizer?

7 A. No.

8 Q. So as we sit here today, would it be fair to say you would
9 not have any idea what the substance of any such
10 communications would have been if they ever occurred,
11 correct?

12 A. That's correct.

13 Q. Mr. Alexander, I'm going to ask Angela to hand you another
14 document. This time we're going to mark it Plaintiffs'
15 Exhibit 41, and I'd like you to please take a look at it.

16 (P Plaintiffs' Exhibit 41 marked for
17 identification.)

18 Q. Plaintiffs' Exhibit 41 is a copy of an aerial photograph
19 that we obtained from the Elkhart County Surveyor's Office
20 dated 1998 that shows the frame shop and the main shop.
21 Do you see that in the middle of the picture?

22 A. Yes.

23 Q. Okay. If you look at the frame shop to the north, do you
24 see there's a bunch of debris piled along the parking lot
25 there right at the edge of the grass?

1 A. Yes.

2 Q. Do you know what that is?

3 A. Not from the picture, no.

4 Q. Do you recall ever seeing debris piled on the parking lot
5 in front of the frame shop?

6 A. Yes.

7 Q. How often did you see debris piled on the parking lot in
8 front of the frame shop?

9 A. Two, three times a year.

10 Q. Okay. And what did it typically consist of?

11 A. Old skids, these things they call palletainers. It's like
12 a wire cage type deal.

13 Q. And what did you say it was called?

14 A. Palletainer, yeah.

15 Q. Anything else?

16 A. That's pretty much it.

17 Q. What happened with the scrap metal that was left over from
18 the welding operations that was not going to be used in
19 connection with building frames?

20 A. It was dumped into an open-top steel container.

21 Q. Was it ever laid out on the parking lot?

22 A. The scrap steel?

23 Q. Yes.

24 A. No.

25 Q. Where was the open-top steel container located?

1 A. It would have been in the truck dock at the top of the
2 picture, which would be the north side of the truck dock.

3 Q. Can you go ahead and put a red circle around that on
4 Plaintiffs' Exhibit 41 so we know where that steel
5 container was located?

6 A. (Complying.)

7 Q. And is it in this picture? Can you see it in this
8 photograph?

9 A. No.

10 Q. Just to the south of where you circled in red, there's an
11 object. Is that the hopper that was used for the waste in
12 the frame shop?

13 A. No, it shouldn't be.

14 Q. What is that item; do you know?

15 A. That's almost got to be a truck or something in there.

16 Q. You believe that's a truck parked there?

17 A. Yeah.

18 Q. Where was the hopper for the frame shop located?

19 A. It was normally kept at the far north end.

20 Q. So when you were talking about the steel container that
21 the scrap metal was thrown into, you were referring to the
22 hopper?

23 A. Yes.

24 Q. And you've circled in red on Plaintiffs' Exhibit 41 where
25 that was kept?

1 A. Yes.

2 Q. On the far north part of the building, was there a
3 cylindrical object that protruded from the side of the
4 building? The far northeast corner, I should say.

5 A. Far northeast corner. Are you talking about this thing
6 right here?

7 Q. Well, not specifically to this photograph. But to your
8 recollection on the northeast corner of the building, was
9 there a cylindrical tank that was protruding from the
10 building?

11 A. A tank?

12 Q. Or a cylindrical shaped object?

13 A. In the northeast corner, there was an object that could
14 have been called cylindrical, yes.

15 Q. And what was that?

16 A. It was an awning over the door.

17 Q. Then looking at the loading dock, there's more debris
18 piled there to the south of the dock and to the east of
19 that. Do you know what that debris is?

20 MR. DEVETSKI: I'm going to object to the
21 characterization of what's depicted in the picture.
22 I don't think it's obvious that there's any debris in
23 particular in this picture.

24 A. I have no idea what it is.

25

1 BY MR. MICHAEL:

2 Q. You don't know what it is that's piled on the parking lot
3 at the frame shop in the photograph we've marked as
4 Plaintiffs' 41; is that correct?

5 A. That's correct.

6 Q. Now, to the south of that in the main shop, can you draw a
7 circle around the 45-yard roll-off that we've talked about
8 today.

9 A. In the main plant. (Complying.)

10 Q. Okay. And will you just put a little "RO" so that we're
11 sure we understand what you've identified as the roll-off.

12 A. (Complying.)

13 Q. Okay. On the northern part of the building, way up in the
14 northeast corner, there's some more stuff piled out in the
15 parking lot there in front of the building. Do you see
16 that?

17 A. Which building?

18 Q. On the main --

19 A. The main building?

20 Q. The main building.

21 A. Yeah.

22 Q. Do you know what that stuff is?

23 A. Again, I would say it's probably old skids, more of the
24 palletainers. That stuff was always stored outside.

25 MS. HARTZLER: Rod, where are you talking about?

1 MR. DEVETSKI: Let him tell us where.

2 MR. MICHAEL: Where the witness is pointing.

3 MR. DEVETSKI: Where are you talking about?

4 MR. MICHAEL: On the northeast corner of the
5 building.

6 MR. DEVETSKI: But it was your question. What
7 were you asking about?

8 MR. MICHAEL: Well, he didn't have any problem
9 understanding it. He was just pointing it out to
10 Kelly. On the northeast corner --

11 MR. DEVETSKI: Well, I don't know whether he was
12 pointing out what you were asking about, and that's
13 why the question.

14 MR. MICHAEL: On the northeast corner of the main
15 building.

16 MR. DEVETSKI: Okay.

17 MS. HARTZLER: Where, so that the witness is
18 actually asking a question --

19 MR. DEVETSKI: I don't know if you're thinking
20 the same thing he is.

21 BY MR. MICHAEL:

22 Q. Will you put a circle around the debris on the
23 northwest -- outside of the northeast corner of the
24 building, Mr. Alexander, so we know what you were
25 referring to?

1 A. (Complying.)

2 Q. And then -- do you know what that stuff is?

3 A. 100 percent sure, no, I don't know.

4 Q. Okay. I'm going to hand you a document we're going to
5 mark as Plaintiffs' Exhibit 42.

6 (Plaintiffs' Exhibit 42 marked for
7 identification.)

8 Q. Do you recognize Plaintiffs' Exhibit 42?

9 A. Yes.

10 Q. Is this the document you told me about earlier today that
11 you reviewed with Ms. Hartzler and Mr. Devetski?

12 A. Yes.

13 Q. Okay. And then back behind the building, and if you
14 orientate it, you got to turn it up to get north, south,
15 east and west right.

16 To the west of the building, there's some items or
17 something back behind the building in the grassy area --

18 A. Yes.

19 Q. -- do you see that? And what was it that you believe
20 those items to be?

21 A. Possibly work tables.

22 Q. Can you think of anything else they can be?

23 A. No.

24 Q. Do you know why some of them to the north are white,
25 whereas the ones to the south are not?

1 A. No.

2 Q. And will you circle the roll-off in Plaintiffs' Exhibit 42
3 also, please.

4 A. (Complying.)

5 Q. And then on the frame shop, will you circle the hopper.

6 A. (Complying.) I'm not sure if that's the hopper, if they
7 moved it or what.

8 Q. And you're pointing to the object on the south side of the
9 loading dock?

10 A. Yeah.

11 Q. So you don't know where the hopper was in -- where it is
12 in this particular picture?

13 A. No.

14 Q. Okay. Down on the south end of the parking lot next to
15 the grass where we looked before, do you see there's some
16 cars; and then to the west of those cars, there's some
17 more stuff piled. Do you know what that stuff is?

18 A. No.

19 Q. Okay. I'm going to hand you a document that we're going
20 to mark as Plaintiffs' 43, and I'd ask you to please take
21 a look at it.

22 (Plaintiffs' Exhibit 43 marked for
23 identification.)

24 Q. Do you see 43 is entitled "Defendant Flexsteel's Responses
25 to Plaintiffs' First Requests For Admission, Alternative

1 Interrogatories and Requests for Production of Documents"?

2 A. Yes.

3 Q. And in Request 2 it says, "Admit that your operations at
4 the site at any time following your purchase of the
5 facilities in 1997 caused the generation of solid waste."
6 Do you see that?

7 MR. ULMER: Page 2.

8 A. Page 2, which one?

9 BY MR. MICHAEL:

10 Q. Request for Admission 2.

11 A. Okay. Yeah.

12 Q. Do you see where I am?

13 A. Yes.

14 Q. Okay. And in response it states, "Flexsteel admits that
15 its operations generated solid waste, such as office
16 waste, excess fabric, excess paper, cardboard boxes, scrap
17 steel, and other similar types of waste. Individuals with
18 knowledge regarding this response include at least Jerry
19 Alexander based on personal knowledge and experience
20 working at the former Dygert Seating Division of
21 Flexsteel." Do you see that?

22 A. Yes.

23 Q. And do you agree with that statement?

24 A. Yes.

25 Q. If you turn to Request 3 it says, "Admit that with respect

1 to the solid waste referenced in RFA No. 2, you did not
2 perform a hazardous waste determination under 40 Code of
3 Federal Regulations, CFR 262.11 and/or 329 Indiana
4 Administrative Code (IAC) 10-7.2-1(a)." Do you see that?

5 A. Yes.

6 Q. And the response says, "Flexsteel denies this request.
7 Employees of the former Dygert Seating Division did
8 evaluate the characteristics of the solid waste for proper
9 management and off-site disposal. Individuals regarding
10 this response include at least Jerry Alexander based on
11 personal knowledge and experience working at the former
12 Dygert Seating Division of Flexsteel." Do you see that?

13 A. Yes.

14 Q. Do you agree with that statement?

15 A. I'm not sure what they're talking about for evaluating
16 solid waste.

17 Q. Were you the person responsible for evaluating solid waste
18 at the Cooper Drive facility and the main shop on the
19 Marina Drive site?

20 A. For like the trash going out, that type of solid waste?

21 Q. For any type of solid waste.

22 A. No.

23 Q. So you disagree with the response to Request for Admission
24 3?

25 A. Yes.

1 Q. Did you ever make any type of hazardous waste
2 determination concerning any of the waste that went into
3 the 45-cubic-yard roll-off that Himco took away?

4 A. No.

5 Q. To your knowledge, did anyone at Flexsteel ever make a
6 hazardous waste determination with respect to the waste
7 that went into the 45-cubic-yard roll-off that Himco took
8 away?

9 A. Not that I'm aware of.

10 Q. To your knowledge, did anyone at Flexsteel determine if
11 any of its waste constituted an F listed waste under 40
12 CFR 261.31?

13 A. Say that again. I didn't hear you.

14 Q. Sure. To your knowledge, did anyone at Flexsteel
15 determine if any of its waste constituted an F listed
16 waste under 40 CFR 261.31?

17 A. Not to my knowledge.

18 Q. To your knowledge, did anyone at Flexsteel determine if
19 any of its waste constituted a K listed waste under 40 CFR
20 261.32?

21 A. I have no idea.

22 Q. To your knowledge, did anyone at Flexsteel determine if
23 any of Flexsteel's waste constituted P or U listed waste
24 under 40 CFR 261.33?

25 A. No idea.

1 Q. Are you aware of anyone at Flexsteel having ever performed
2 any chemical or physical analysis to determine the
3 ignitability of Flexsteel's waste?

4 A. No.

5 Q. Are you aware of anyone at Flexsteel ever performing any
6 chemical or physical analysis to determine the corrosivity
7 of Flexsteel's waste?

8 A. No.

9 Q. Are you aware of anyone at Flexsteel ever performing any
10 chemical or physical analysis to determine the reactivity
11 of Flexsteel's waste?

12 A. No.

13 Q. Are you aware of anyone at Flexsteel ever performing any
14 chemical or physical analysis to determine the toxicity of
15 Flexsteel's waste?

16 A. No.

17 Q. And just so we understand the waste flow within the frame
18 shop and the main shop was you had trash cans and people
19 would throw their waste in the trash cans, correct?

20 A. Yes.

21 Q. Those trash cans would then be emptied into a trash
22 compactor, correct?

23 A. Yes.

24 Q. And that trash compactor was located in the main shop,
25 correct?

1 A. Yes.

2 Q. And the trash compactor would smash up the trash and then
3 it would be dumped into the 45-yard roll-off and Himco
4 could come pick it up and take it away, correct?

5 A. Yes.

6 Q. And to your knowledge, you have no idea where Himco took
7 that waste, right?

8 A. No.

9 Q. How often did Himco empty the 45-cubic-yard roll-off?

10 A. Once a month to a month and a half, roughly.

11 Q. Now, was that for the entire time from 1992 to 2007, or
12 did it change over the years?

13 A. It fluctuated over the years, but that was probably a
14 rough average.

15 Q. So it would go up, down?

16 A. Yeah.

17 Q. And you're giving me what you believe to be an average?

18 A. Yes.

19 Q. I'm going to hand you a document that we're going to mark
20 as Plaintiffs' Exhibit 44.

21 (Plaintiffs' Exhibit 44 marked for
22 identification.)

23 Q. Do you have Plaintiffs' Exhibit 44 in front of you?

24 A. Yes.

25 Q. And you can see it's an Elkhart County Groundwater

1 Protection Ordinance Inspection Form dated January 7,
2 1999?

3 A. Yes.

4 Q. And it lists the contact as Greg Lucchese, and the
5 facility address is listed as 23542 Cooper Drive. Do you
6 see that?

7 A. Yes.

8 Q. Okay. If you turn to the second page, there are two
9 substances that are listed, mineral spirits and cutting
10 oil. Do you see that?

11 A. Yes.

12 Q. Now, I did not see mineral spirits identified on either
13 the hazardous chemical list that's attached to your Hazard
14 Communication Program document or in the handwritten list
15 that you prepared. Is that just another one you missed?

16 A. I thought mineral spirits was there.

17 Q. If it's there, maybe I missed it. I didn't see it.

18 A. I have to find it. Yep, I don't see it either.

19 Q. So fair to say that's just another one you missed when you
20 did your list?

21 A. Yes.

22 Q. Okay. And then the reference to cutting oil, is that the
23 same thing as hydraulic oil that you talked about; or is
24 that something different?

25 A. I don't really know what they're specifically referring to

1 as cutting oil.

2 Q. So you don't know what that is?

3 A. No.

4 Q. That's correct?

5 A. No.

6 Q. Is that something on your list?

7 A. It may be -- it may be this Rheolube 377 on the second
8 page.

9 Q. If it is Rheolube 377, what is that used for?

10 A. I believe it's a water-based lubricant, and that may be
11 what they're referring to as cutting oil.

12 Q. But you don't know for sure one way or the other?

13 A. No, not really. I'd need more of a name other than
14 cutting oil. Oh, okay. Wait a minute. Time out. Time
15 out. No, it can't be that. Okay. I'm getting confused.
16 They're referring to Cooper Street building, and then
17 they're referring to R and E area. I'm not sure what the
18 connection is between the two.

19 Q. It's fair to say you just don't know what that means,
20 right, the cutting oil?

21 A. Yeah.

22 Q. I'm going to hand you another document that we're going to
23 mark as Plaintiffs' Exhibit 45.

24 (Plaintiffs' Exhibit 45 marked for
25 identification.)

1 Q. Okay. On the second page of Plaintiffs' Exhibit 45, which
2 is another Elkhart County Groundwater Protection Ordinance
3 Inspection Form, there's another listing for cutting oil.
4 Do you see that?

5 A. Yes.

6 Q. And, again, you don't know what that is; is that correct?

7 A. That's correct.

8 Q. And then there's hydraulic oil down below it. Do you see
9 that?

10 A. Yes.

11 Q. Now, that has a capacity of a 55-gallon drum written
12 there. Is that what you told me about earlier today?

13 A. Yes.

14 Q. Okay. What was the hydraulic oil used for?

15 A. Hydraulic benders that actually bent the tubing into the
16 form they were after.

17 Q. What happened to waste hydraulic oil after you were done
18 with it?

19 A. It would have been picked up by a waste oil company.

20 Q. Who picked up your waste hydraulic oil?

21 A. I'm not really sure.

22 Q. You're just assuming that that's what should have
23 happened?

24 A. Yeah.

25 Q. I'm going to hand you a document I'm going to mark as

1 Plaintiffs' Exhibit 46 and ask you to take a look at it,
2 please.

3 (Plaintiffs' Exhibit 46 marked for
4 identification.)

5 Q. Plaintiffs' Exhibit 46 is another Elkhart County
6 Groundwater Protection Ordinance Inspection Form. And
7 this time if you turn to the second page, we've got
8 machine oil listed on the first line. Do you see that?

9 A. Yes.

10 Q. Do you know what machine oil is?

11 A. No.

12 Q. Okay. And then we have another entry for hydraulic oil,
13 another 55-gallon drum. Do you see that?

14 A. Yes.

15 Q. How often did Flexsteel purchase 55-gallon drums of
16 hydraulic oil?

17 A. I don't really know how often.

18 Q. Do you know how often the hydraulic waste oil was hauled
19 away?

20 A. No.

21 Q. Were you ever involved in that process?

22 A. In hauling it away, no.

23 Q. Were you ever involved in collecting it so that it could
24 be hauled away?

25 A. Yes.

1 Q. Okay. How often did you do that?

2 A. Twice the entire time I was there.

3 Q. And how much did you collect those two times?

4 A. Two barrels of it. There was one per bender.

5 Q. Each time?

6 A. No. One each time.

7 Q. And do you know what happened to those two barrels?

8 A. No.

9 Q. Now, earlier today you told me that you hadn't received
10 any RCRA training. Do you remember that?

11 A. Yes.

12 Q. So it's fair to say that you don't know if Flexsteel
13 generated any hazardous waste as defined in RCRA, correct?

14 A. No, that's not correct. I know Gregg Gaskill handled the
15 reporting. I didn't do it. He did it.

16 Q. Okay. With respect to you, your personal knowledge, is it
17 fair to say that you don't know if Flexsteel generated any
18 hazardous waste as defined in RCRA?

19 A. Correct.

20 Q. So it's fair to say that if any hazardous waste was
21 generated at Flexsteel's operation in Elkhart, you
22 wouldn't know -- you wouldn't know the monthly quantity,
23 correct?

24 A. The quantity?

25 Q. Yes.

1 A. No.

2 MR. MICHAEL: Okay. We got to change our tape
3 again. So let's do that real quick and I'll gather
4 up and we'll try and end this thing so Bob can go.

5 VIDEOGRAPHER: Off the record at 4:44.

6 (Pause in proceedings.)

7 (Mr. Devetski left the deposition.)

8 VIDEOGRAPHER: Back on the record at 4:46.

9 BY MR. MICHAEL:

10 Q. Okay. Mr. Alexander, I'm going to ask the court reporter
11 to hand you a document that's marked as Plaintiffs'
12 Exhibit 47.

13 (Plaintiffs' Exhibit 47 marked for
14 identification.)

15 Q. Do you see Plaintiffs' Exhibit 47, Elkhart County
16 Groundwater Protection Program Registration and Inspection
17 Form? In the upper right-hand corner it's dated October
18 8, 2001. Do you see that?

19 A. Yes.

20 Q. And then it says, "Contact Name: Jim Fransen." And then
21 on the bottom right-hand corner it says, "Spills," and
22 it's got "29" circled for a spill of a toxic or hazardous
23 substance. Do you see that?

24 A. Yes.

25 Q. Okay. And then if you turn to the next page there's a

1 description. And it says, "Observed spilled oil from
2 hopper (appears) onto asphalt running onto soils. Remove
3 soils at least six inches below site or smell of oil.
4 Dispose of properly." Do you see that?

5 A. Yes.

6 Q. Now, you told me earlier about an instance where there was
7 some oil that was leaking from a barrel you said?

8 A. Yes.

9 Q. Okay. Is that different from this entry concerning
10 spilled oil from a hopper?

11 A. I don't think so.

12 Q. Do you believe that you were incorrect when you thought it
13 came from a barrel, or do you believe that this is
14 incorrect?

15 A. I believe this is incorrect.

16 Q. It says, "Observed spilled oil from hopper." Do you think
17 the person didn't really see that?

18 A. No. But he may have seen a hopper sitting in the area and
19 just thought that that's what it came from.

20 Q. And how often did Flexsteel have barrels of used oil
21 sitting outside?

22 A. To my knowledge, that was the only time.

23 Q. And that's the time it leaked?

24 A. Yes.

25 Q. And then you've told me you excavated the soil and the

1 asphalt, and you took it out and it wound up on the
2 45-yard roll-off and Himco took it away as the general
3 waste. And that was about October of '01. Do the dates
4 look right to you?

5 A. Yes.

6 Q. Okay. Now, another thing I was confused about is when I
7 read the interrogatory answers, it indicated to me that
8 you had initiated contact with the Elkhart County Health
9 Department. But here it indicates that Mr. Jim Fransen
10 was the contact name. Do you have an explanation for
11 that?

12 A. Yeah. He called them to ask them what to do and you see
13 their reply for it, dispose of it properly. Okay. Well,
14 I checked back to find out what "properly" meant, define
15 properly. That's when they said we could haul it to the
16 landfill.

17 Q. Okay. Was the oil first discovered as a result of a
18 routine inspection being done by the health department?

19 A. Yes.

20 Q. Okay. And that was used oil, correct?

21 A. Yes.

22 Q. And then Jim Fransen was the initial contact person during
23 the inspection when they observed the used oil that had
24 leaked out on the ground, correct?

25 A. Yes.

1 Q. And they said do something about it, but you didn't know
2 what to do. So that's when you called the health
3 department?

4 A. Yes.

5 Q. And you followed their instructions. You dug up the dirt
6 and the asphalt and you put it in the trash and got rid of
7 it, correct?

8 A. Yes.

9 Q. Just real quick, hand you Exhibit 48.

10 (Plaintiffs' Exhibit 48 marked for
11 identification.)

12 Q. Could you look at Exhibit 48 and tell me if you know where
13 those photographs were taken?

14 A. Where?

15 Q. Yes.

16 A. Or when?

17 Q. Where.

18 A. Yeah, I can tell where they were taken.

19 Q. Where were those photographs taken?

20 A. Behind the main plant in the parking lot.

21 Q. Behind the main plant in the parking lot at the Elkhart
22 facility?

23 A. Yeah, the Elkhart plant.

24 Q. Okay. Thank you. I'm going to hand you a document that
25 we're going to mark as Exhibit 29 -- or 49 and ask you to

1 take a look at it.

2 (Plaintiffs' Exhibit 49 marked for
3 identification.)

4 Q. Have you seen Plaintiffs' Exhibit 49 before?

5 A. No.

6 Q. Do you see it's titled "Phase I Environmental Site
7 Assessment, Flexsteel Industries"? It's dated up at the
8 top July 3, 2002.

9 A. Yes.

10 Q. Okay. If you turn to page 8 of the document, it's FLEX01_
11 25071.

12 It says, "According to the key site manager, a
13 55-gallon drum of waste sewing oil is removed from
14 Property B on a periodic basis by Safety Kleen." Do you
15 see that?

16 A. Yes.

17 Q. Okay. And it says, "No other chemical wastes are
18 generated and removed from Property B." Do you know how
19 often waste sewing oil was removed and disposed of?

20 A. I remember one time the entire time I was there.

21 Q. And when was that?

22 A. I couldn't give you a date, but I know I only -- it took
23 me forever to get a barrel full of it.

24 Q. So there was the waste sewing soil that was hauled away at
25 least one time by Safety Kleen?

1 A. Yes.

2 Q. And then there were at least two barrels of used hydraulic
3 oil that was hauled off by Safety Kleen, according to your
4 testimony?

5 A. Well, they were removed by someone. I don't know who.

6 Q. You don't know who took them away?

7 A. No. I never actually saw them.

8 Q. Do you know how much sewing oil was removed by Safety
9 Kleen on the incident that you remember?

10 A. No. I couldn't even swear to it that they removed sewing
11 oil.

12 Q. So you don't know if that statement is accurate or not; is
13 that fair to say?

14 A. No. This could have been the hydraulic oil.

15 Q. So it's fair to say that you don't know if the statement
16 on FLEX01_ 25071 that a 55-gallon drum of waste sewing oil
17 was removed from Property B on a periodic basis by Safety
18 Kleen is correct or not?

19 A. That's correct.

20 Q. Now, in Section 5 under "Interviews" in 5.1, it says, "Key
21 Site Manager." It says, "Mr. Jim Fransen, Operations
22 Manager at Dygert Seating, Inc., was interviewed as the
23 key site manager for both Property A and Property B." Do
24 you see that?

25 A. Yes.

1 Q. And then under, "Other Interviews," it says, "Ms. Rita
2 Stephan of Dygert Seating, Inc., was also interviewed
3 during the course of the Phase I ESA." Do you see that?

4 A. Yes.

5 Q. Did they ever interview you in connection with the Phase
6 I?

7 A. No.

8 Q. Do you know why if you were the person responsible for
9 keeping the list of hazardous chemicals that they did not
10 interview you?

11 A. No, I don't.

12 Q. And no one from Weaver Boos ever asked you the location,
13 types or amounts of any hazardous chemicals that were
14 being used by Flexsteel; is that fair to say?

15 A. That's correct.

16 Q. I'm going to hand you a document we're going to mark as
17 Exhibit 50.

18 (Plaintiffs' Exhibit 50 marked for
19 identification.)

20 Q. Have you seen Exhibit 50 before?

21 A. No.

22 Q. And you can see it's another report, a Phase I
23 Environmental Site Assessment for Dygert Seating, Inc.
24 This one is dated February 6, 1997. Again, it's being
25 done by Weaver Boos. Do you see that?

1 A. Yes.

2 Q. Did anybody interview you in connection with a Phase I
3 environmental site assessment that was done in 1997?

4 A. No.

5 Q. If you turn to page 12, FLEX01_ 17, it says, "Key Site
6 Manager," and it says, "Mr. Greg Lucchese, Executive Vice
7 President of Dygert Seating, was interviewed during the
8 site inspection. Mr. Lucchese reported, to the best of
9 his knowledge, there are no environmental concerns
10 associated with their facilities." Do you see that?

11 A. Yes.

12 Q. Did Mr. Lucchese talk to you prior to providing
13 information to Weaver Boos in connection with this Phase
14 I?

15 A. No.

16 Q. Now, if you look at page 10 of the report, FLEX01_ --

17 A. 10?

18 Q. It's 10 of the report. The Bates number is FLEX01_ 15.

19 A. Okay.

20 Q. Section 4.1 says, "Hazardous Substances and Petroleum
21 Products in Connection with Identified Uses." Do you see
22 that?

23 A. Yes.

24 Q. And it says, "No hazardous substance or petroleum products
25 were observed to be used on the subject site during this

1 investigation." Do you see that?

2 A. Yes.

3 Q. Now, if they would have interviewed you, you would have
4 told them that's not correct?

5 A. That's correct.

6 Q. Because, in fact, hazardous substances and petroleum
7 products were being used on site in 1997, correct?

8 A. Yes.

9 Q. I'm going to hand you a document we're going to mark as
10 51.

11 (Plaintiffs' Exhibit 51 marked for
12 identification.)

13 Q. Do you see Plaintiffs' Exhibit 51 is a letter of
14 transmittal from Weaver Boos Consultants to Mr. David
15 Dygert dated March 4 of '97. Do you see that?

16 A. Yes.

17 Q. And in the remarks it says, "Please insert the attached
18 into the Phase I report and destroy the originals." Do
19 you see that?

20 A. Yes.

21 Q. Did you ever see any original documents with respect to
22 the Phase I report that was conducted by Weaver Boos in
23 1997?

24 A. No.

25 Q. So it's fair to say that you would not know what documents

1 were destroyed in connection with this letter of
2 transmittal from Weaver Boos; is that fair?

3 A. That is correct.

4 MR. MICHAEL: I've got 4:58, and Bob said we got
5 to quit at 5:00 so he could take you home. So
6 there's no time for me to start another document, so
7 I'll go ahead and stop now. Thank you, Mr.
8 Alexander, for your time today.

9 CROSS-EXAMINATION

10 BY MR. COPE:

11 Q. Barry Cope for Indiana Insurance. Just two questions.
12 Your affidavit indicates that you were aware that
13 Flexsteel sold the operations to PBD Corp. --

14 A. Yes.

15 Q. -- in 2002, the beginning of 2002.

16 Are you aware of -- or have you ever seen the
17 contract of sale for that transaction?

18 A. No.

19 Q. Are you aware of any leases between PBD Corp. and
20 Flexsteel that were entered into at that time?

21 A. Leases? (Shaking head.)

22 Q. Are you aware of who owned the actual property as opposed
23 to the business with respect to the sites?

24 A. No.

25 MR. COPE: Okay. Thank you.

1 VIDEOGRAPHER: Off the record at 4:59.

2 (The deposition adjourned sine die at 4:59 p.m.)

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CERTIFICATE

I, Angela J. Galipeau, a Notary Public, in and for the County of Porter and State of Indiana, do hereby certify:

That GERALD ALEXANDER appeared before me on Tuesday, August 2, 2011, and was duly sworn or affirmed to testify the truth, the whole truth, and nothing but the truth to questions propounded at the taking of the foregoing deposition in a cause now pending and undetermined in said court;

That I further certify that I then and there reported stenographically the proceedings at the said time and place; that the proceedings were then transcribed from my original shorthand notes; and that the foregoing typewritten transcript is a true and correct record thereof;

That I am not a relative or employee or attorney or counsel, nor a relative or employee of such attorney or counsel for any of the parties hereto, nor am I interested directly or indirectly in the outcome of this action;

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 8th day of August, 2011.

Angela J. Galipeau, RPR, CSR
Notary Public, State of Indiana
Residence: Porter County
Commission Expires: 4-23-17

STATE OF INDIANA
IN THE ELKHART SUPERIOR COURT 3

LEO VANNORMAN, et al.,)	
)	
Plaintiffs,)	
)	
vs)	
)	Cause No.
FLEXSTEEL INDUSTRIES, INC., LDL)	20D03-1103-PL-10
REALTY COMPANY, LLC, HERITAGE)	
FINANCIAL GROUP, INC., DAVID L.)	
DYGERT and PHYLLIS B. DYERT,)	
)	
Defendants.)	
-----)	

GERALD ALEXANDER

I hereby acknowledge that I have read the foregoing transcription regarding the case of Leo Vannorman, et al., vs Flexsteel Industries, Inc., et al., taken Tuesday, August 2, 2011, and that the same is a true and correct transcription of the answers given by me to the questions propounded, except for the additions or changes, if any, as noted on the attached errata sheet.

GERALD ALEXANDER

SUBSCRIBED AND SWORN to
before me this day
of A.D. .

Notary Public, State of Indiana
County of Residence:
My Commission Expires:

0	117:11;161:20,21,24; 166:21;178:10;227:18	135:21;210:3,7,8,10; 211:1	57:6,8,10;158:10; 162:23;199:6	36 (3) 187:11,13,14
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